

Jury Trial, Vol. II of V

146

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
NORTHERN DIVISION

UNITED STATES OF AMERICA,  
Plaintiff,

v.

File No. 12-20607

GARY L. WILSON and SUE A. WILSON,  
Defendants.

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REDACTED TRANSCRIPT

JURY TRIAL  
VOLUME II OF V

BEFORE THE HONORABLE THOMAS L. LUDINGTON

United States District Judge  
United States Post Office Building  
1000 Washington Avenue  
Bay City, Michigan 48708  
Wednesday, May 22, 2013

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1 Bay City, Michigan

2 Wednesday, May 22, 2013

3 At 8:37 a.m.

4 (Court, counsel and defendants present; out of the  
5 presence of the jury)

6 THE COURT: Good morning.

7 MS. PARKER: Good morning, your Honor.

8 THE COURT: Counsel ready to proceed?

9 MS. PARKER: Government is ready, your Honor.

10 MR. JACOBS: The only additional matter I would like to  
11 place on the record, your Honor, is dealing with objections. I  
12 would like to join in co-counsel's -- co-defense counsel's  
13 objections. That way we can expedite matters and we each won't  
14 have to jump up and make separate objections or join in the other  
15 party's objections during the course of the trial.

16 MR. PIAZZA: So agreed, your Honor.

17 THE COURT: And if there is ever an exception, we will  
18 note it.

19 MR. JACOBS: Thank you, your Honor.

20 THE COURT: Could we have the jury, please.

21 Miss Pop, one comment the jury made yesterday was that  
22 if you could elevate your voice a little bit, it will be easier  
23 for them to understand you. So you might even want to get a  
24 little closer to the mic.

25 MS. POP: Okay.

1 (At 8:42 a.m. - jury enters courtroom)

2 THE COURT: Good morning.

3 THE JURY: Good morning.

4 THE COURT: Miss Jacobs, if we could have the jury  
5 sworn, please.

6 THE CLERK: Sorry, I need you to stand and raise your  
7 right hand.

8 Do you solemnly swear that you will well and truly try  
9 the issues joined in this cause now pending and a true verdict  
10 render, according to the law and evidence given to you in open  
11 court?

12 THE JURY: I will.

13 (At 8:43 a.m. - jury panel sworn)

14 THE COURT: Please be seated. Ladies and gentlemen, I  
15 want to speak to you briefly about the function of the judge in a  
16 criminal trial and your function as jurors. You've been sworn as  
17 the jury to try this case. By your verdict, you will decide the  
18 disputed issues of fact that arise between the parties. I will  
19 decide the questions of law that arise during the trial and  
20 before you retire to deliberate at the close of the trial, we  
21 will instruct you on the law that you are to follow and apply in  
22 reaching your verdict.

23 It is my responsibility to conduct the trial of the case  
24 in an orderly, fair and efficient manner, to rule upon questions  
25 of law that arise during the course of the trial, and to instruct

1 you about the law that applies to the case.

2           You can look upon my function, that is the function of  
3 the Court, as that of a referee or umpire. I have no personal or  
4 professional interest in how this case turns out. My job is to  
5 see to it that only legally admissible evidence is received in  
6 court and to tell you about the law at the end of the trial as  
7 well as to settle any disputes between the attorneys that may  
8 arise during the course of the trial concerning the admission of  
9 evidence.

10           You will have been provided, and now have on, your  
11 badges. They identify you as a juror which is important to us.  
12 It's important to many other people that will be in the vicinity  
13 of the courthouse, including the parties.

14           What they do is to inform us of what your role is. As  
15 we will -- as a result, we will not be talking about the case in  
16 your presence other than in the courtroom and we will be making a  
17 point to maintain our distance from you to respect your role  
18 during the course of the case.

19           I tell you that because the parties also have a similar  
20 responsibility. If you arrive at the elevator and they are  
21 arriving at the same period of time and they turn around and walk  
22 away, they are not doing that because they are mean or ugly  
23 people. They are doing that because it's part of their charge to  
24 respect your role and the badges identify you as a juror to both  
25 the parties as well as the other employees within the court.

1           As you have noticed, probably, the temperature in this  
2 building can vary greatly. It has no relationship whatsoever to  
3 the thermostat. We just live with whatever it delivers. So you  
4 need to be somewhat flexible. The air conditioning may not be  
5 working at one point and then all of a sudden, it will turn the  
6 place into a freezer. We just note that so that you're prepared  
7 to adapt to whatever circumstance may arise here in the -- in the  
8 room. We do it daily and we've survived.

9           You will be permitted to take notes during the course of  
10 the trial. You are not obligated to do so. If you do take  
11 notes, it's important that you not be influenced by the notes of  
12 another juror. Your independent memory of what you recall during  
13 the course of the trial is the most important thing. Note taking  
14 must also not be allowed to distract you from what happens here  
15 in court.

16           Your notes are also not evidence in the case and they  
17 are not to take precedence over anyone's independent recollection  
18 of what the evidence was during the course of trial. Notes are  
19 only an aid to recollection. They are not entitled to any  
20 greater weight than the actual recollection or your impression as  
21 to what actually occurred here in the courtroom.

22           Any notes taken by a juror should not be disclosed to  
23 anyone other than a fellow juror. You will be provided with the  
24 notebooks that you may use during the course of the trial. They  
25 must remain in the jury room at the end of each day. At the



1 conclusion of the trial, the notes will be destroyed and they  
2 will not be read by anyone.

3 Let me briefly explain the general order of procedure  
4 that we will follow during the trial. First, the attorneys for  
5 the government will be making an opening statement which they  
6 will outline -- she will outline the theory of the government's  
7 case.

8 The attorneys for the defendants may then make an  
9 opening statement or they may reserve their statements until  
10 later on during the course of the case. The opening statements  
11 are not evidence. They are only intended to assist you in  
12 understanding the viewpoints and the claims of the parties.

13 After the opening statements, we will begin with the  
14 taking of the evidence. The attorneys for the government will  
15 proceed first. She will call witnesses and will offer exhibits  
16 during the course of the witness's testimony, such as documents  
17 or physical objects.

18 The attorneys for the defendant will have a right to  
19 cross-examine any of the witnesses that are called by the  
20 government in order to test the truth and accuracy of their  
21 testimony or to otherwise elicit testimony favorable to the  
22 defendants.

23 Following the government's presentation, the defendant  
24 will have an opportunity to present evidence. You should clearly  
25 understand that a defendant in a criminal case is not obligated

1 to produce any evidence whatsoever. The law does not require a  
2 defendant in a criminal case to prove his innocence or to produce  
3 any evidence.

4 Similarly, however, the attorney for the government has  
5 a right to cross-examine any of the witnesses that may be called  
6 by the defendant.

7 After all the defendant -- after all the evidence has  
8 been presented, we will provide you preliminary final  
9 instructions that will explain the law that applies to the  
10 case.

11 After we have done that, the attorneys for both sides  
12 will have an opportunity to present closing arguments to you in  
13 support of their case. The statements of the attorneys in  
14 closing statements, as in opening statements, are not evidence.  
15 They are only intended to assist you in understanding the  
16 evidence and the theory of each party. You must base your  
17 decision only on the evidence.

18 Following the closing arguments of the attorneys, I will  
19 give you instructions on the manner of your deliberations and  
20 then you will retire and deliberate on your verdict. You will do  
21 that by applying the law as I give it to you to the facts as you  
22 find them to be.

23 The function of the jury is to determine the facts. You  
24 are the sole and exclusive judges of the facts and you alone  
25 determine the weight, the effect and the value of the evidence as

1 well as the credibility of the witnesses. You must consider and  
2 weigh the testimony of all witnesses who appear before you and  
3 you alone are to determine whether to believe any witnesses and  
4 the extent to which any witness should be believed.

5         It is your responsibility to consider any conflicts  
6 in testimony which may arise during the course of the trial.  
7 Your decision as to any fact in this case is final. On the  
8 other hand, it is your duty to accept the law as I explain it to  
9 you.

10         Your determination of the facts must be based only on  
11 the evidence which is offered and received in this courtroom.  
12 Evidence consists of the sworn testimony of the witnesses. It  
13 may also include exhibits which will be documents or other  
14 physical objects. It may also include some things which the  
15 Court simply instructs you to consider as evidence.

16         Your function as the jury is as equally important as the  
17 function of the Court and the attorneys. You should give careful  
18 consideration to the testimony of witnesses as it is presented to  
19 you for your consideration. You should keep an open mind and not  
20 form or express any opinion about the case until after you have  
21 heard all of the evidence, the closing arguments of the attorneys  
22 and the instructions that apply to the law.

23         From this point forward, you must not discuss the case  
24 with anyone, not even members of your own family or your fellow  
25 jurors. It would be unfair for you to discuss the case among

1 yourselves or with family or friends before you retire to  
2 consider your verdict with your fellow jurors.

3           You may tell your family and friends that you've been  
4 selected as a juror. Then you must tell them that you are under  
5 instructions from the Court and you are not to discuss the case  
6 with them until you are permitted to do so.

7           After the case is submitted to you for deliberations,  
8 you must discuss it only when the Court instructs you to do so  
9 and only in the jury room and only in the presence of all of your  
10 other fellow jurors.

11           When the trial is over, you may discuss the case with  
12 anyone you wish. Until that time, we ask you that you control  
13 your natural -- the natural desire to discuss the case both here  
14 and at home.

15           You must not visit any scene that is mentioned in the  
16 evidence of the trial. If for any reason it would become  
17 necessary to visit a scene or a place, we would normally take you  
18 there as a group under the supervision of the Court.

19           You are not to consider as evidence any personal  
20 knowledge that you might have of a scene or place that's  
21 mentioned in the evidence.

22           You must not make any investigations on your own about  
23 the case, the witnesses, the parties or the attorneys. I know  
24 that many of you have smart phones, iPads and the equivalent and  
25 that you use them in daily life to research many issues that may

1 arise during -- that may arise. But during the course of this  
2 case, it's important that none of those devices be used either to  
3 communicate any information about the case to any party or to  
4 investigate anything about the case, and by that I mean, the  
5 attorneys, the witnesses or anything else related to the  
6 proceeding.

7           A trial follows long-established rules of procedure and  
8 evidence. The attorneys are trained in the rules and from time  
9 to time, they may make objections and motions. I will rule on  
10 the objections and motions most of the time in your presence.  
11 It's important for you to understand that in making those  
12 decisions about admitting or excluding evidence, my job is to  
13 apply the rules of evidence that govern the admission of those  
14 materials into Court.

15           You should not draw any inference from the decisions  
16 that I make concerning the admission of evidence, that I have any  
17 view about the way the case should be resolved.

18           Please let me know immediately by raising your hands if  
19 you cannot hear a witness or see what is being demonstrated  
20 during the course of the case. We will promptly react to any  
21 questions that you have.

22           Those are the instructions that I -- further  
23 instructions that I organized for the morning. Any additions or  
24 objections?

25           MS. PARKER: The government requests the direct and

1 circumstantial evidence instruction, which at the moment would  
2 seem particularly apropos, your Honor.

3 THE COURT: Indeed, it would. Do you have it present?

4 MS. PARKER: I do, your Honor.

5 THE COURT: I assume there is no objection from the --

6 MR. JACOBS: None, your Honor.

7 THE COURT: Thank you.

8 Some of you may have heard the terms direct evidence and  
9 circumstantial evidence. Direct evidence is simply evidence like  
10 the testimony of an eyewitness, which if you believe it, directly  
11 proves a fact. If a witness testified that he saw it raining  
12 outside and you believed him, that would be direct evidence that  
13 it was raining.

14 Circumstantial evidence, by contrast, is simply a chain  
15 of circumstances that may indirectly prove a fact. If someone  
16 walked into the courtroom wearing a raincoat, covered with drops  
17 of water and carrying a wet umbrella, that would be  
18 circumstantial evidence from which you could conclude that it was  
19 raining.

20 It is your job to decide how much weight to give the  
21 direct and circumstantial evidence. The law makes no distinction  
22 between the weight that you should give to either one or say that  
23 one is any better than the other.

24 You should consider all the evidence, both direct and  
25 circumstantial, and give it whatever weight you believe that it

1 deserves.

2 Any other additions or corrections from the government?

3 MS. PARKER: Thank you, your Honor, no.

4 THE COURT: Gentlemen?

5 MR. JACOBS: No, sir.

6 MR. PIAZZA: No, your Honor.

7 THE COURT: We would entertain the opening statement on  
8 behalf of the government.

9 MS. POP: Good morning. May it please the Court, Ladies  
10 and Gentlemen of the Jury, counsel, again my name is Anca Pop and  
11 my co-counsel is Janet Parker. We are both Assistant United  
12 States Attorneys in the Bay City office and together, we are  
13 representing the United States against the defendants, Gary  
14 Wilson and Sue Wilson.

15 This criminal case is about lying to the government.  
16 It's about these two defendants, Gary and Sue Wilson, who along  
17 with co-conspirators, Robert and Maxine Pochmara, defrauded the  
18 United States and made false statements to the IRS and the Social  
19 Security Administration.

20 We are here today because the Wilsons are charged with  
21 conspiracy to defraud the United States or one of its agencies  
22 and providing or causing to provide false information to the  
23 Social Security Administration regarding the true identity of a  
24 person earning wages.

25 We are here today because over the course of more than

1 one decade, the Wilsons, who owned a corporation called GW & SW,  
2 that operated a NAPA Auto Parts Store in Rogers City, Michigan,  
3 worked with Robert Pochmara on a regular basis but made paychecks  
4 for his work payable to Maxine Pochmara and caused their  
5 accountant to issue W-2s in Maxine Pochmara's name and Social  
6 Security number for work that was done by Robert Pochmara at the  
7 Wilson's auto parts store.

8 Gary and Sue Wilson falsely reported to the Social  
9 Security Administration and to the IRS that Maxine Pochmara was  
10 the one working and earning those wages when in reality, she was  
11 not working there and Robert Pochmara was the one performing the  
12 work.

13 And at the same time, all this time that he was working  
14 for the NAPA Auto Parts Store, Robert Pochmara was receiving full  
15 disability benefits from the Railroad Retirement Board in a total  
16 amount of \$218,000 and had he reported these earnings for work  
17 from NAPA, he would have lost these benefits.

18 We are here today because the Wilsons falsely reported  
19 to the Social Security Administration and to the IRS that Maxine  
20 Pochmara earned an additional \$337,929, from NAPA Auto Parts  
21 Store, which in addition to her regular income, she had a  
22 full-time job at a health care center, earning a full-time salary  
23 from there, more than doubled her reported income.

24 We are here today because Gary and Sue Wilson lied to  
25 the IRS and to the Social Security Administration.



1           The facts are simple. All you have to do in this case  
2 is just follow the paper trail. Compare what they had in their  
3 internal paperwork and bank statements against what they had in  
4 their official paperwork reported to the government. Compare  
5 what they did and what was happening in reality against what they  
6 reported to the government.

7           The evidence will show that in 1992, Robert Pochmara  
8 applied for and later obtained disability benefits from the  
9 Railroad Retirement Board for some back problems that he  
10 developed while working for the railroads.

11           The Railroad Retirement Board is a federal agency and  
12 unlike the rest of us who participate in the Social Security  
13 Administration system for disability and pension, people working  
14 for the railroad have their own system and that's the Railroad  
15 Retirement Board.

16           You will see that Robert Pochmara signed numerous forms,  
17 acknowledging that while receiving disability benefits, he had a  
18 duty to report any type of work that he might be performing,  
19 whether paid or unpaid, and whether working for someone else or  
20 self-employed.

21           He was notified in writing that he had this duty because  
22 any work that he might be performing may affect his disability  
23 payments or may even cause the board to reconsider his disability  
24 altogether.

25           He signed these forms acknowledging that he had this

1 duty to report work and that if he made any false statements, he  
2 would be committing a crime.

3 Every year thereafter, Robert Pochmara was notified and  
4 was sent reminders regarding his continued disability benefits  
5 and continued duty to report any type of work. You will see that  
6 he was even notified that he had to report if he ever became a  
7 corporate officer or if he owned or operated a corporation,  
8 including a corporation owned by a friend or a family member and  
9 whether for pay or not.

10 You will learn that all this time, Robert Pochmara lived  
11 in Rogers City in the same house with Maxine Pochmara. And that  
12 Maxine Pochmara worked full-time for the Northeast Michigan  
13 Community Mental Health Authority earning a full-time salary from  
14 there.

15 In 1998, Robert Pochmara and Maxine Pochmara decided to  
16 purchase 45 percent of the shares of the company GW & SW that was  
17 owned by Gary and Sue Wilson and that operated the NAPA Auto  
18 Parts Store in Rogers City, Michigan.

19 We will show you internal documents from this company  
20 indicating that on January 5th, 1998, GW & SW, through its  
21 president, which was Gary Wilson, and secretary and treasurer,  
22 Sue Wilson, sold 45 percent of its shares to both Maxine and  
23 Robert Pochmara for \$70,000.

24 This document -- at the same time, Gary and Sue Wilson  
25 retained the rest of the 55 percent of the company jointly. This

1 document will also show you that on the same day, the following  
2 corporate officers were elected: President, Gary Wilson; Vice  
3 President, Robert Pochmara; and Secretary and Treasurer, Sue  
4 Wilson. And this document was signed by both Gary Wilson and Sue  
5 Wilson.

6           However, when the Wilsons officially reported to the  
7 government who the corporate officers were, through an affidavit  
8 of information of the company, the corporate officers all of a  
9 sudden changed. With the exception of Gary Wilson who was still  
10 President, there was no Vice President. Sue Wilson was only  
11 Secretary. And the Treasurer was Maxine Pochmara. There was no  
12 mention whatsoever of Robert Pochmara in these official documents  
13 reported to the government.

14           And this document was signed by Sue Wilson in March of  
15 1998. We will also show you a second document, a similar  
16 document, signed by Sue Wilson in 1999 reporting the following  
17 corporate officers: President, Gary Wilson; Vice President,  
18 Maxine Pochmara; and Secretary and Treasurer, Sue Wilson.

19           You will see documents and hear testimony indicating  
20 that starting in 1998, Robert Pochmara started working for GW &  
21 SW at the NAPA Auto Parts Store on a full-time basis and that  
22 Maxine Pochmara never worked there. Gary Wilson and Sue Wilson  
23 also worked for this store, Gary Wilson on a full-time basis and  
24 Sue Wilson on a part-time basis, taking care of the bookkeeping  
25 for the company.

1           And aside from witnesses who will testify to you about  
2 his -- about their feelings with the NAPA Auto Parts Store and  
3 with Robert Pochmara while he was employed, as an employee or  
4 manager at the NAPA Auto Parts Store, we will show you documents  
5 from the defendants themselves, acknowledging that Robert  
6 Pochmara was working for the store.

7           In November of 2008, when the Railroad Retirement Board  
8 officer of investigations requested some information from the  
9 NAPA Auto Parts Store regarding Robert Pochmara's employment  
10 there, Sue Wilson responded in writing, listing Robert Pochmara's  
11 earnings from 2003 to 2007 and stating that Gary Wilson and  
12 Robert Pochmara were both store managers working equal hours, but  
13 the paychecks, payroll checks, were written to Maxine Pochmara,  
14 wife of Robert Pochmara.

15           She also stated that -- well, a letter -- in a letter  
16 submitted a month later, in December of 2008, she stated that  
17 Robert Pochmara never drew earnings from NAPA Auto Parts Store  
18 but Maxine Pochmara did and that Robert Pochmara worked on behalf  
19 of Maxine Pochmara.

20           Yes, Ladies and Gentlemen of the Jury, you will see that  
21 Robert Pochmara was working for the store but the paychecks for  
22 his work that were reported to the Social Security Administration  
23 were written in Maxine Pochmara's name.

24           You will see weekly paychecks signed by either Sue  
25 Wilson or Gary Wilson in Maxine Pochmara's name, but you will

1 also see that Maxine Pochmara never worked there, that she had  
2 her own full-time job with the Northeast Michigan Community  
3 Mental Health Authority earning a full-time salary from there.  
4 What you will not see is any paychecks written in Robert  
5 Pochmara's name.

6 We will also show you some documents showing that every  
7 year, GW & SW Company was issuing W-2s in Maxine Pochmara's name  
8 and Social Security number, reporting all of Robert Pochmara's  
9 work earnings as a salary under her name. There was no 1099 form  
10 or any other kind of dividend or stock disbursement form in  
11 Maxine Pochmara's name. No. Just salary for work she never  
12 performed.

13 There was never, ever, a W-2 issued in Robert Pochmara's  
14 name, though, as if he was never even there. The Wilsons were  
15 falsely reporting this to the IRS as Maxine Pochmara's salary and  
16 they did the same false reporting to the Social Security  
17 Administration.

18 On the other hand, you will see loan applications and  
19 mortgage applications on behalf of GW & SW and NAPA Auto Parts  
20 Store. They were co-signed not only by Gary Wilson, Sue Wilson  
21 or Maxine Pochmara but also by Robert Pochmara. You will also  
22 see bank statements for a bank account opened on behalf of GW &  
23 SW and NAPA Auto Parts Store that had Robert Pochmara as an owner  
24 on the account, together with Gary and Sue Wilson and Maxine  
25 Pochmara.

1           On the other hand, you will see that every year's tax  
2 forms prepared by the Wilsons' company and signed by Gary Wilson  
3 and submitted to the IRS, never referred or never mentioned  
4 Robert Pochmara and falsely represented that Maxine Pochmara was  
5 working there and dedicating a hundred percent of her time to the  
6 company all these years, when in fact, that was a lie and the  
7 defendants knew that.

8           You will also see other corporate paperwork and earning  
9 reports listing Gary Wilson, Sue Wilson and Maxine Pochmara as  
10 employees of the corporation together with some other employees  
11 that they had, but they never, ever, mentioned Robert Pochmara  
12 when in fact, he was the one working and not Maxine Pochmara and  
13 he was working on a regular basis with Gary Wilson and sometimes,  
14 also, with Sue Wilson.

15           You will also see that the company had many ups and  
16 downs when it comes to its taxable income but the checks written  
17 to Maxine Pochmara only went up, usually.

18           You will see that Robert Pochmara never reported this  
19 income from the NAPA Auto Parts Store to either IRS, Social  
20 Security Administration or Railroad Retirement Board and  
21 continued to draw disability benefits while Maxine Pochmara  
22 reported to the IRS that income as her own.

23           And this conspiracy and fraud went on and on until the  
24 beginning of 2009 when this case was initiated. From 1998 to  
25 2009, the Wilsons falsely reported to the IRS and the Social

1 Security Administration that Maxine Pochmara was earning an  
2 additional \$337,929 from GW & SW NAPA Auto Parts Store, which in  
3 addition to her real income, more than doubled her reported  
4 income.

5 At the same time, Robert Pochmara received \$218,000 in  
6 disability benefits from the Railroad Retirement Board while  
7 working full-time for NAPA Auto Parts Store.

8 When they were alerted that this investigation had been  
9 opened in this case and realizing their crimes had been  
10 discovered, Robert and Pochmara quit this arrangement. Robert  
11 Pochmara quit working for NAPA Auto Parts Store and GW & SW  
12 purchased their 45 shares back.

13 Like I said before, all you have to do is follow the  
14 paper trail. Look at what they did and look at what they told  
15 the government they did. Look at what they had in their internal  
16 paperwork and then look at what they had in their official  
17 paperwork reported to the government.

18 In a criminal trial such as this one, in order for the  
19 defendants to be found guilty, we must satisfy you beyond a  
20 reasonable doubt that the defendants are guilty of conspiracy to  
21 defraud the United States and providing false information to the  
22 Social Security Administration. And to do so, we will prove  
23 several elements to you.

24 When it comes to conspiracy to defraud the United  
25 States, we will show that two or more people knowingly agreed to

1 engage in conduct, that conduct amounted to fraud against the  
2 United States or one of its agencies, and then an overt act in  
3 furtherance of the agreement has been committed.

4 Now, the judge will instruct you that conspiracy is not  
5 some mystical concept. It simply means an agreement or an  
6 understanding between two or more people to do something, whether  
7 that agreement is spoken or unspoken.

8 You will also learn that to defraud means to cheat the  
9 government out of money or property but also means impairing,  
10 obstructing or defeating the loss of a function of any government  
11 agency or department by dishonest means.

12 You will also learn that a crime does not have to be  
13 committed directly by the defendants but proof that they  
14 attempted or they used a third party to commit the crime may be  
15 sufficient.

16 Now, when it comes to providing false information to the  
17 Social Security Administration, we will show that the defendants  
18 knowingly, willfully and with intent to deceive, furnished false  
19 information or caused false information to be furnished to the  
20 Social Security Administration regarding the true identity of a  
21 person earning wages.

22 The government will prove each and every one of these  
23 elements to you beyond a reasonable doubt. And you will see in  
24 this trial, both direct and circumstantial evidence, from which  
25 you should draw your own conclusions using your common sense and



1 reason. Now, the judge already gave you an instruction  
2 regarding direct and circumstantial evidence but I will give you  
3 a couple more examples so you become more comfortable with this  
4 concept.

5           We all live in Michigan and we are very familiar with  
6 the winters here so let's assume that one night in January, you  
7 go to bed at ten p.m. and you set your alarm to wake up at five  
8 a.m. You look outside before you go to bed and you see snow --  
9 and you see no snow on the ground. You go to bed and you sleep  
10 through the night. And when you wake up at five a.m., you see  
11 snow on the ground.

12           Now, you didn't see it snowing which would have been  
13 direct evidence, but you didn't see it because you were sleeping.  
14 But using your common sense and reason, you conclude that it  
15 must have snowed sometime between five -- or ten p.m. and five  
16 a.m.

17           You also look outside in your driveway and you see some  
18 foot tracks coming towards your porch and you see your newspaper  
19 on your porch. Now, you didn't see anyone bringing your  
20 newspaper but using your common sense and reason, you conclude  
21 that it must have been the newspaper boy bringing you the  
22 newspaper. All you have to do is use your common sense and  
23 reason.

24           And I should note that much of the evidence and the  
25 arguments in this case will revolve around the question of

1 whether the defendants had the requisite intent or mental state  
2 to commit these crimes. Did they knowingly agree to defraud the  
3 United States? Did they knowingly, willfully and with intent to  
4 deceive, provide false information to the Social Security  
5 Administration?

6 The government will present evidence answering these  
7 questions affirmatively. The evidence will show that, yes, the  
8 defendants had the requisite intent to commit these crimes.

9 Now, most of the evidence proving their mental state is  
10 going to be indirect evidence because we will not have the luxury  
11 of the defendants making a clear admission that this is what  
12 their intent was and we cannot read their minds and tell what  
13 they are thinking, either.

14 But what you can do to discern their intent and mental  
15 state is look at all the facts and circumstances in evidence.  
16 Use your common sense and reason and draw your own conclusions.  
17 What the defendants did, what the defendants said, how the  
18 defendants acted and any other fact and circumstance in evidence  
19 may show you what the defendants' state of mind was.

20 The government's functions when compared by intentional  
21 falsities and misrepresentations, reported or caused to be  
22 reported by the defendants, the Wilsons here. The Wilsons  
23 concealed the fact that Robert Pochmara was working and earning  
24 wages at the NAPA Auto Parts Store and falsely reported to the  
25 Social Security Administration and to the IRS these wages under

1 Maxine Pochmara's name and Social Security number.

2           The defendants had a duty to provide accurate  
3 information to these government agencies and their duty was not  
4 that technical or hard to understand. They had a duty not to  
5 file false tax returns and a duty not to submit false information  
6 regarding the true identity of the person earning wages. We all  
7 have to file tax returns and we all report our own wages. We do  
8 not report someone else's wages as our own.

9           Lies, misrepresentations, false statements and half  
10 truths for twelve years do not equate to mistakes, accidents or  
11 incidental reasons.

12           You will hear from several witnesses in this trial. You  
13 will hear from several individuals who will testify that they had  
14 dealings with Gary Wilson and Robert Pochmara when they were  
15 employees or managers at the NAPA Auto Parts Store, but they  
16 never had to deal with Maxine Pochmara.

17           You will hear from the case agent and from other  
18 government employees working for the Railroad Retirement Board or  
19 for the IRS. And you will even hear from the person keeping the  
20 accounting records for GW & SW and NAPA Auto Parts Store.

21           And you will see a lot of documents and these witnesses  
22 will explain to you where these documents came from, what they  
23 mean, and how you can read them. But really, what it comes down  
24 to is a very simple concept, knowing that Robert Pochmara worked  
25 at the NAPA Auto Parts Store, the Wilsons falsely reported that

1 Maxine Pochmara was working instead.

2 In a nutshell, this is the evidence that the government  
3 will present. This evidence will prove that the defendants  
4 knowingly agreed to defraud the United States and willfully and  
5 with intent to deceive, provided or caused to be provided false  
6 information to the Social Security Administration.

7 They knew what they were doing and they lied to the  
8 Social Security Administration and to the IRS about the true  
9 identity of the person working and earning wages at the NAPA Auto  
10 Parts Store.

11 I would like to thank you in advance for your service in  
12 this matter. After hearing all the witnesses and looking at all  
13 the evidence, you will find that the United States has proved  
14 every element of each offense beyond a reasonable doubt.

15 At the end of this trial, my co-counsel Janet Parker  
16 will get a chance to talk to you and she will ask you to return  
17 verdicts of guilty as to both defendants as to each count, the  
18 only verdicts consistent with the evidence and the law in this  
19 case.

20 Thank you.

21 THE COURT: Thank you, ma'am.

22 Mr. Jacobs, do you wish to provide an opening statement  
23 on behalf of Mr. Wilson?

24 MR. JACOBS: Yes, sir.

25 THE COURT: Your floor.

1 MR. JACOBS: Again, I'm Steve Jacobs. My client is Gary  
2 Wilson. Opening statement is a preview, an outline of what we  
3 think the testimony will be. I can't guarantee to you what the  
4 testimony will be. We have -- we interview people ahead of time.  
5 Some people, we have notes, we have records, we have -- in this  
6 case, we even have tape-recordings. But sometimes, people say  
7 something different than what I assert in my opening statement  
8 and I'm not misleading you. My statements aren't evidence. The  
9 evidence comes from the witness stand. And if there is some  
10 inconsistency with what I say or what our opponents say, please  
11 go with what the evidence is.

12 We are allowed to comment on the law a little bit. They  
13 commented on the law and, of course, the government has to prove  
14 beyond a reasonable doubt that Gary Wilson is guilty of what he  
15 is charged with, conspiring to defraud the United States and  
16 also, in essence, defrauding or filing false information to the  
17 Social Security Administration.

18 The government has the burden in this case. They have  
19 to show each and every element of the offense and they have to  
20 prove my client and his wife -- or his wife, excuse me, I will  
21 let Mr. Piazza talk about Sue Wilson -- beyond a reasonable  
22 doubt. That Gary Wilson has no obligation to take the stand.

23 You heard the judge tell you the mechanics of the trial.  
24 They go first. They present their evidence. We get to  
25 cross-examine their witnesses. Then we have an opportunity to

1 put people on the stand. We don't have to because again, the  
2 defendant doesn't have a burden at all in this case. If we do  
3 put people on the stand, then the government, of course, is  
4 allowed to cross-examine them. And in some situations, there is  
5 what we call rebuttal evidence. That doesn't happen very often.  
6 And then there is closing statements. The judge will give you  
7 instructions.

8           And then you will all get to sit back -- well, not sit  
9 back but go back into that room and do your jobs. And that is to  
10 determine the facts in this case and whether the government has  
11 proven beyond a reasonable doubt that Gary Wilson is guilty with  
12 what they are asserting.

13           They are asserting he was involved in a criminal  
14 agreement, that there was some mutual understanding, either  
15 spoken or unspoken, between two or more people, to cooperate with  
16 each other to defraud the United States.

17           Well, you were told here earlier that we're here today  
18 for many reasons. And I would assert to you that we're here  
19 today because Maxine and Robert Pochmara lied to Gary and Sue  
20 Wilson and they lied to others. We're going to be able to show  
21 that pretty easily. The folks even lied about whether they were  
22 married. They held themselves out to the world as husband and  
23 wife, signed documents as husband and wife, lived together, and  
24 we're going to show you they were divorced in 1981.

25           That they lied about Bob being on -- or Robert Pochmara

1 being on railroad retirement disability. They said he was on a  
2 pension. You're going to hear a lot of government witnesses say,  
3 well, we believed Bob was on a pension. Why did they believe  
4 that? Because that's what they asserted.

5 Gary Wilson and Sue -- well, Gary Wilson -- again, it's  
6 hard for me to not throw in the wife but that's not my job --  
7 Gary Wilson did not know that Robert Pochmara was on disability  
8 and was subject to any earning restrictions. But let's talk  
9 about what he -- what he knew and what the facts will be in this  
10 case.

11 You'll hear that Robert Pochmara -- excuse me, Gary  
12 Wilson, is 58 years old -- well, he's going to be 58 in a couple  
13 days -- that he is married to Sue Wilson, that they had three  
14 children, that they have three more grandchildren, that they live  
15 up in the Rogers City area, northeastern Michigan. That --  
16 northeastern lower peninsula. Gary graduated from a school up  
17 there, I think it was Onaway High School. He was actually born  
18 in Millersburg. And that after high school, got some -- took  
19 some trade, what I would call trade school, learned how to weld,  
20 learned how to be an automobile mechanic. In fact, became  
21 certified as an automobile mechanic.

22 They worked different odd jobs and you'll hear he worked  
23 for a dealership for a period of time, worked for the limestone  
24 company up there. It's changed names, I don't know what it's  
25 called now but they've had different names. That at some point

1 in time, Gary even worked part time for the sheriff's department  
2 up there with animal control.

3           That he was injured in -- let's see -- he was injured in  
4 1988. He couldn't work as a mechanic anymore, fallen off a roof,  
5 and looked into other options. Now, you'll hear that there was a  
6 NAPA store in Onaway that had closed and there was no NAPA store  
7 in Rogers City. So Gary Wilson then contacted the NAPA people.  
8 They needed some sort of feasibility study. He contacted a  
9 certified public accountant that he knew and that they'd used  
10 for -- that they had used for twenty, thirty years, a Mr. Jerome  
11 Kieliszewski, and you'll hear some testimony that you heard in  
12 the government's opening that someone from the accounting firm  
13 will testify in this matter. I believe that may be Mr.  
14 Kieliszewski's wife, Dawn, who also works in the office. That --  
15 she works there with a few other people.

16           That they did this feasibility study and the NAPA people  
17 said, okay. That Gary, of course -- well, not -- I shouldn't say  
18 of course -- but needed a partner, and he knew a person by the  
19 name of Roger Wentzel who had worked at a local garage. And in  
20 May of 1992, they created GW & RW, Inc., and Gary had a building,  
21 it was a laundromat that they actually converted it to the NAPA  
22 store.

23           Roger contributed some capital, some money. They both  
24 put in many hours in that store. They both drew a payroll  
25 check and they both paid taxes, of course, on their payroll



1 check.

2 But after a few years, they were kind of struggling.  
3 Roger wanted out. They really needed more money, needed more  
4 money for inventory. They had some internal problems in the  
5 store. You'll hear about, there was some theft in the store, and  
6 that someone was actually prosecuted and convicted.

7 And so Gary got a loan and bought out Roger. But again,  
8 times are tough, looking for another investor. And Gary Wilson  
9 gets approached by Maxine Pochmara. Now, Gary Wilson and Sue  
10 Wilson had known Maxine and Robert Pochmara for many years. They  
11 lived in the same general neighborhood. I wouldn't -- you know,  
12 the houses aren't like they are in the city out there. They are  
13 not next door neighbors but they are still in the same general  
14 neighborhood. In fact, their kids had played together.

15 That Gary believed that Robert, the husband -- see, they  
16 lived together. They always lived together, held themselves out  
17 as husband and wife. Again, we thought they were married, didn't  
18 know they were -- well, I can't say nobody knew, they knew -- but  
19 other people were not -- it was not public knowledge that they  
20 were divorced.

21 That she approached Gary about investing in the business  
22 and receiving a return on her investment. And her investment --  
23 and there is no dispute -- that Maxine, and she signed the  
24 documents with her husband, Robert Pochmara, invested \$70,000  
25 into the corporation.

1 I guess I should have shared with you, when Roger  
2 Wentzel was bought out, Gary and Sue then incorporated their  
3 business as GW & SW, Inc., so they changed the names and of  
4 course, they went to the local accountant and had the accountant  
5 do the paperwork for the incorporation and they would also take  
6 their books to the accountant to do their taxes and things like  
7 that.

8 And that they had to set up, how does Maxine get her  
9 return on her investment and how do we get a payroll check.  
10 So -- and we're talking a mom and pop type store up north where  
11 you're paid more or less based on how much money is available and  
12 what your interest is in the company.

13 And so like I said, Gary is there 60 hours a week. The  
14 only day he took off was on Fridays and he would be there, also,  
15 on Sunday. He drew a payroll check. His wife, Sue, she had --  
16 she acted as the bookkeeper there but she also had many other  
17 jobs. She worked at one point in time for a beauty salon or  
18 cosmetic -- I'm saying it the wrong way -- I guess I will call it  
19 a beauty salon. Also, worked out of her house. Also sold  
20 insurance. And, you know, there will be testimony to that  
21 effect.

22 But she did the books. She wrote the payroll checks,  
23 she contacted the accountant, at least had some role with  
24 figuring out what the deductions are for the different people  
25 involved, actually sending out the checks. She -- another person

1 with -- with not a great education but she also had the little  
2 minute book that they would try to figure out the requirements  
3 and how you -- how you file for your minutes and your annual  
4 meetings and things like that.

5           Maxine's role was -- now, Maxine had another full-time  
6 job. Maxine's role was, she invested \$70,000, no doubt about  
7 that. That she had a key to the building, that she was on these  
8 bank accounts, that she wrote checks. And we will even bring in  
9 a check or two to show that Maxine wrote checks that say NAPA  
10 store. That she was involved in these business decisions.

11           And when I talked to the different professionals and  
12 accountants about it, I used the word absentee owner and I get  
13 corrected. Well, they said it's not necessarily an absentee  
14 owner if someone is still involved in the business and involved  
15 in the business decisions as far as their ability to draw a  
16 paycheck.

17           Well, see to me, and to most people, an absentee owner  
18 is somebody who isn't there eight hours a day, five days a week,  
19 but -- and we will let -- we will let the CPAs explain that to  
20 you, but someone who is not there 40 hours a week that has an  
21 ownership interest in a building can still draw a paycheck. They  
22 have to do something. And we assert that Sue Wilson did  
23 something, that Maxine Pochmara did something.

24           Now, they are saying, whoa, wait a minute, we think  
25 Robert Pochmara did something and that you guys consciously

1 defrauded the United States by giving Robert's payroll checks to  
2 Maxine. That's what's going on here, folks. They are saying  
3 that they were giving Robert's payroll checks to Maxine  
4 Pochmara.

5           You will see that these people met with the  
6 professionals, did the paperwork. They believed they did what  
7 they were supposed to do and drew paychecks and paid taxes on  
8 that money. Both the corporation paid taxes, Gary Wilson paid  
9 taxes, Sue Wilson paid taxes, Maxine Pochmara paid taxes.

10           Again, we don't know what Maxine Pochmara and Robert  
11 Pochmara's motivation is. Now, we can kind of look back and say,  
12 well, they did have some motivation here. They wanted to invest  
13 in a business, get some money back for Robert without saying it's  
14 Robert's money. And so they might have used Gary and Sue Wilson.  
15 That's not an issue. I -- I think that's another thing the  
16 government is going to be able to show in this case, that they  
17 used Gary and Sue Wilson.

18           They have to prove beyond a reasonable doubt that Gary  
19 and Sue Wilson intended to defraud the United States and intended  
20 to furnish false information to the Social Security  
21 Administration.

22           So what happens in this matter? What happens is, Gary  
23 gets -- Gary Wilson gets a form from the railroad retirement  
24 people at work. And you're going to see a lot of exhibits and  
25 this is the Exhibit 24 in that series. And you heard the

1 government talk about this without saying the exhibit number in  
2 their opening.

3           They get this form from the railroad retirement people  
4 that says, tell us about the earnings of Robert Pochmara. He  
5 takes it home and he sits down with Sue and they are looking at  
6 it and they are drawing the conclusion, well, they must be asking  
7 about Maxine's income.

8           So they fill out the form but they attach a couple  
9 documents saying this is, in essence, Maxine's income. This is  
10 the payroll checks to Maxine and that Robert Pochmara was there  
11 on occasion. There on occasion? Well, first it started out on  
12 Fridays. Robert Pochmara would be at the NAPA store and way back  
13 when this started in '98. And then he started coming in all the  
14 time.

15           He's there -- and again, Gary and Sue Wilson told the  
16 government this. They were told, you don't have to talk to us,  
17 you don't have to agree to a taped statement. Well, we've got  
18 nothing to hide. We will sit down, we will tell you the  
19 situation and how this came down.

20           So after a period of time, Robert Pochmara is there at  
21 the store, at the NAPA store. He is there two to three days a  
22 week. He is there, I think, five to six -- five to six hours a  
23 day, two to three days a week. He even delivered parts. He  
24 drove the little NAPA truck. He even -- after a period of time,  
25 he, like everybody else, his shirts kept getting dirty, they gave

1 him a NAPA shirt.

2           So, yes, he was there. We're not asserting he wasn't  
3 at the store. They are asserting that Gary and Sue Wilson  
4 purposely attempted to defraud the United States and they didn't  
5 do that.

6           Now, on November 20th of 2008, Agent Hackett and another  
7 special agent with the Railroad Retirement Board come to the NAPA  
8 store and ask Gary Wilson some questions. And in essence, that's  
9 when Gary finds out that Robert Pochmara is on some Social  
10 Security -- not Social -- railroad retirement disability and he's  
11 subject to some sort of earning restrictions. They were there to  
12 see if Bob had a job and he made more money, it would affect the  
13 amount of money he got from the railroad disability people.

14           Then the agents caused or another form was sent out from  
15 the railroad retirement people asking for some other years of  
16 Robert Pochmara's income. Gary took that back home. He and Sue  
17 went through it. They filled it out and they said, this is  
18 Maxine's income, not Robert Pochmara's income.

19           And then they -- supposedly, they are defrauding the  
20 United States and yet, on January 13th of 2010, both Gary Wilson  
21 and I think Sue Wilson was on January 14th, might have been the  
22 same day, but folks, you're going to hear or I believe you're  
23 going to hear the taped interviews of Gary and Sue Wilson by  
24 those agents.

25           You're going to hear that they voluntarily and freely

1 said in more detail or answered the questions that were asked of  
2 them. You're probably going to hear more detail -- you will hear  
3 more detail of this matter in trial.

4 Gary never said Robert wasn't there. He never attempted  
5 to defraud the United States. You were asked, folks, to use your  
6 reason and common sense. And you were given an example about  
7 snow. But your reason and common sense will tell you it doesn't  
8 snow in Michigan in May. But it did here a couple weeks ago.

9 So, please, use your reason and common sense, listen to  
10 all the evidence in this case, listen to the government's  
11 witnesses and our cross-examination of those witnesses. And we  
12 would -- and we'll be asking you to return a verdict of not  
13 guilty in this case.

14 Thank you, folks.

15 THE COURT: Thank you.

16 Mr Piazza on behalf of Mrs. Wilson.

17 MR. PIAZZA: Thank you, your Honor. Ladies and  
18 Gentlemen of the Jury, good morning.

19 Being the third attorney in line, I'm not going to be  
20 here for long but I just want to talk about a few things during  
21 opening statement. I represent Sue Wilson over there.

22 Please, during the course of the trial, look at the  
23 evidence or lack of evidence. See who it points to, who it  
24 doesn't point to. As indicated by both prior counsel talking to  
25 you, you will be hearing a lot of evidence against Robert and

1 Maxine Pochmara. They are not on trial here. Sue Wilson is on  
2 trial. Look at what the government has and doesn't have relating  
3 to Sue Wilson.

4           The government has accused Sue Wilson with conspiracy to  
5 defraud the United States as well as providing false information  
6 to the Social Security Administration. What the government has  
7 to do is prove each element of those charges beyond a doubt based  
8 on reason. And to show conspiracy, they have to show two or more  
9 people knowingly agreed to engage in conduct and that Sue Wilson  
10 was a member of that conspiracy. They have to prove that the  
11 conduct constituted a fraud, that there is overt acts committed  
12 in furtherance of the agreement.

13           You are not going to hear evidence to convince you  
14 beyond a reasonable doubt that Sue Wilson made a -- joined a  
15 conspiracy or agreed to conspire to defraud the United States.

16           The other count is providing false information to the  
17 Social Security Administration. The government has to show that  
18 Sue Wilson knowingly, willfully, and with the intent to deceive  
19 -- there are not "ors" in there, they are "ands" -- and to  
20 furnish false information in regard to the true identity of a  
21 person earning wages.

22           You will hear at the conclusion of the trial jury  
23 instructions relating to some of the general concepts and I ask  
24 you to listen to those instructions but apply them during the  
25 course of the trial. First and foremost, Sue Wilson as she sits



1 there right now, is presumed to be innocent. You've heard  
2 opening statements. But that's it, opening statements. It's not  
3 evidence.

4 Sue Wilson is presumed to be innocent and the burden  
5 stays right here with the government. They must prove each case  
6 beyond a doubt based on reason. True, co-counsel indicated that  
7 Gary and Sue Wilson are from Rogers City, own a small business up  
8 north, the NAPA Auto Store, started out around 1992.

9 About 1998, they were approached and Gary Wilson was  
10 approached by Maxine Pochmara to invest in it. And as Mr. Jacobs  
11 indicated, both Gary and Sue Wilson believed that they were  
12 husband and wife. They had no knowledge that Robert Pochmara was  
13 on disability.

14 The government indicated in their opening statement,  
15 that Robert Pochmara had a duty to disclose any income to the  
16 railroad board of directors of any investment. Didn't say that  
17 Sue Wilson had to tell the railroad company anything. Because  
18 she didn't know he was on disability. It appeared that it was  
19 Maxine Pochmara making the investment.

20 At the store, Gary Wilson was running it. He was the  
21 manager. He owned -- between himself and Sue Wilson, owned 55  
22 percent. Robert Pochmara ran some errands, delivered some parts  
23 but he was not an employee. Maxine Pochmara got paid for her  
24 investment. Loose terms, absentee owner, whatever, she made an  
25 investment and was getting paid. There was nothing illegal about

1 that.

2 And the government is accusing Sue Wilson of being  
3 involved in this conspiracy to defraud the United States when in  
4 reality, Sue Wilson wasn't at the store, didn't really work at  
5 the store. Gary Wilson brought home the documents and Sue Wilson  
6 wrote checks out from her house. You know, paid bills -- she  
7 paid, you know, wages, you know, whatever it was that she was  
8 told to do by Gary Wilson, she did. Questions were asked by Gary  
9 Wilson or by the accountant.

10 You will not hear that Sue Wilson has a degree in  
11 accounting, that she is sophisticated in tax laws or anything  
12 else. What you will hear is that she is simply the wife of Gary  
13 Wilson, and just wrote out the checks as she was told.

14 Late 2008, early 2009, the government comes in and  
15 starts an investigation on Robert and Maxine Pochmara. They talk  
16 to Sue Wilson. Sue Wilson says here, here are some documents.  
17 We've got nothing to hide. Here is what we did. For Sue Wilson  
18 had nothing to hide. She did not enter into a conspiracy to  
19 defraud the United States. She didn't willfully, knowingly and  
20 with the intent to defraud or give false information to anybody.  
21 She simply signed the checks, signed the reports.

22 The government makes big things out of who is on the  
23 board of directors. It's a small corporation. And Sue and Gary  
24 Wilson believed that Robert Pochmara was Maxine's husband. Which  
25 was a lie. But that's what they believed. It's not like we are

1 talking about GM where people are voted in.

2 During the course of the next few days, we ask you to  
3 look at the evidence and look at the lack of evidence. I'm sure  
4 the government is going to say they don't have to prove, you  
5 know, who profited, who benefited. But look at the acts or the  
6 lack of acts.

7 Sue Wilson did not benefit from what the government is  
8 alleging she did. She did not benefit or -- or profit. She did  
9 not gain anything. All she did was simply write out the checks  
10 like she was told and did not intend to defraud anybody.

11 She did not willfully defraud, she did not knowingly  
12 defraud. She did not agree to defraud. And the government  
13 cannot present any evidence to show you beyond a reasonable doubt  
14 that she did.

15 But you will not hear from the government and their  
16 proofs, you will not hear that Sue Wilson knew that Robert  
17 Pochmara was on disability during the time frame. You will  
18 hear -- you will not hear from the government that she knew that  
19 Robert Pochmara could not collect any money. You will not hear  
20 that she knowingly gave false information to the Social  
21 Security.

22 She gave information of what she believed was true. You  
23 will not hear from the government that she agreed to commit  
24 fraud. You will not hear from the government by proof beyond a  
25 reasonable doubt that Sue Wilson intended to commit any fraud or

1 to commit any crime whatsoever.

2           You have a small town business with the wife of the guy  
3 who ran it simply signing the checks and signing documents as she  
4 was told. There is no intent to defraud, no conspiracy. At the  
5 conclusion of the case, simply saying the government hasn't  
6 proven their case, that it hasn't been proven, and will ask you  
7 to bring in a verdict of not guilty.

8           Thank you.

9           THE COURT: Your first witness, please.

10           MS. PARKER: Thank you, your Honor. The government  
11 calls Deanna Smith.

12           Your Honor, could we have the podium moved?

13           THE COURT: Yes.

14           Good morning. Please raise your right hand.

15           Do you solemnly swear that the testimony you are about  
16 to provide will be the truth, the whole truth and nothing but the  
17 truth so help you God?

18           THE WITNESS: I do.

19           THE COURT: The witness stand is over on that side of  
20 the courtroom, if you will have a seat there, please, ma'am.

21                               DEANNA SMITH

22 Having first been duly sworn at 9:46 a.m., testified as follows:

23                               DIRECT EXAMINATION

24 BY MS. PARKER:

25 Q.    Good morning.

1 A. Good morning.

2 Q. Will you state your full name and spell it for us, please?

3 A. Deanna Smith, D-E-A-N-N-A --

4 Q. All right. Can you pull the microphone just a little bit  
5 closer.

6 A. Deanna Smith, D-E-A-N-N-A, Smith, S-M-I-T-H.

7 Q. All right. How are you employed?

8 A. I didn't hear you.

9 Q. How are you employed?

10 A. I am employed with the federal government at the Railroad  
11 Retirement Board.

12 Q. What are -- what's your position?

13 A. I am the district manager of a field office.

14 Q. And where is that field office located?

15 A. In Detroit, Michigan.

16 Q. And you said the Railroad Retirement Board is a federal  
17 agency?

18 A. Yes.

19 Q. Tell us what the job of that particular federal agency is,  
20 please.

21 A. Well, the field that I work in, particularly, is a field  
22 where we take retirement applications, survivor applications,  
23 unemployment and sickness applications. We basically administer  
24 the RRA, meaning Railroad Retirement Act and the Railroad  
25 Unemployment Insurance Act to railroad employees and their

1 families.

2 Q. Are you familiar with Social Security?

3 A. Very much, yes.

4 Q. How does Social Security and the Railroad Retirement Board  
5 relate or compare?

6 A. Well, they are very similar in a lot of ways. When a --  
7 when a person is in normal employment, other than railroad  
8 employment, they usually would file under Social Security  
9 Administration for retirement benefits.

10 The Railroad Retirement Board, basically, administers  
11 the retirement benefits for railroad employees and their families  
12 only, if they qualify for the benefit. We pay two components for  
13 the retirement benefit and one of the components is very similar  
14 to Social Security.

15 Q. All right. Before we get into maybe some of those  
16 specifics, how long have you been with the Railroad Retirement  
17 Board?

18 A. It's 23 years.

19 Q. And have you received specialized training regarding the  
20 programs that are available to railroad employees through the  
21 Railroad Retirement Board?

22 A. Yes.

23 Q. And you said your office is in Detroit?

24 A. Yes.

25 Q. And does that Detroit office basically cover all of

1 Michigan?

2 A. Yes.

3 Q. All right. Now, going back a little bit to the function of  
4 the Railroad Retirement Board, is it a fair statement that  
5 basically, people who participate in the Railroad Retirement  
6 Board programs can either, depending on their circumstances,  
7 ultimately receive railroad retirement or if something happens,  
8 that causes them to be unable to perform their job, disability?

9 A. Yes.

10 Q. And you're involved with administering those two types of  
11 programs?

12 A. Yes.

13 Q. And can you explain to me briefly what you do in that  
14 regard?

15 A. Basically, pre-retirement counseling is -- is done by myself  
16 and my staff. We also do retirement counseling. We take the  
17 applications. We gather the information for the applications and  
18 that -- and that is also in regard to disabilities as well.

19 Q. Now, you indicated you were involved in pre-retirement  
20 counseling. Are you familiar with written materials that are  
21 given to railroad employees regarding their potential benefits  
22 under the railroad retirement system?

23 A. Yes.

24 MS. PARKER: Your Honor, may I approach the witness?

25 THE COURT: You may.

1 MS. PARKER: Thank you.

2 Q. I'm going to show you several documents here. One is a  
3 booklet entitled Employee Annuity marked as Government's Proposed  
4 Exhibit 10. Next one is Employee Disability Benefits marked as  
5 Government's Proposed Exhibit 11. Next one is marked as  
6 Government's Proposed Exhibit 12 and it's entitled, Employee and  
7 Spouse Annuities, Events That Must Be Reported. And then three  
8 documents, 13A, B, and C that are marked as Form RL-4.

9 Do you see all those?

10 A. Yes, I do.

11 Q. Are you familiar with all of those?

12 A. Yes, I am.

13 Q. Are those documents that you have used in the course of your  
14 employment over this twenty-some years?

15 A. Yes.

16 Q. And are these documents that are provided in the ordinary  
17 course of business to railroad employees?

18 A. Yes.

19 MS. PARKER: Your Honor, I offer Government's Proposed  
20 Exhibits 10, 11, 12, 13A, B and C.

21 MR. JACOBS: No objection.

22 MR. PIAZZA: Your Honor, I'm not sure but, you know,  
23 there is no indication that Robert Pochmara received these  
24 documents so I'm not sure they would be admissible at this  
25 particular time or relevant, you know, unless the government can



1 show that Robert Pochmara actually received them or --

2 THE COURT: I'm struggling with relevance.

3 MS. PARKER: Your Honor, I think the relevance is that  
4 we need to establish the program, how it works and how it would  
5 relate to motivations for the conduct by other indicted members  
6 of the conspiracy.

7 THE COURT: Can we have a brief discussion?

8 (Whereupon sidebar conference held on the record as  
9 follows)

10 THE COURT: I'm presuming that the fact that Mr.  
11 Pochmara may have been ineligible and may have not reported to  
12 the disability board goes in by stipulation.

13 MS. PARKER: I have not had any stipulations whatsoever.

14 MR. PIAZZA: No, I won't stipulate. They have to show  
15 that Robert Pochmara knew of the -- the government has to show  
16 that Robert Pochmara knew of the ineligibility to show any type  
17 of conspiracy.

18 THE COURT: I'm not disputing that, if -- I mean,  
19 you're the one, as I understand it, who is making a relevance  
20 objection.

21 MR. PIAZZA: Right, yeah, at this point in time because  
22 it's irrelevant, you know, unless they can tie it to Robert  
23 Pochmara.

24 THE COURT: I appreciate that. I mean, that's the only  
25 thing they are missing. I mean, if we contingently introduce the

1 evidence at this juncture, but they are going to provide  
2 Pochmara -- they are going to be able to do it on an annual  
3 questioning. I mean, I'm looking, it is a tangential  
4 significance to your defense at this point which is whatever  
5 Pochmara knew and did, wasn't shared with your client. So, I  
6 mean, do you want this testimony?

7 MR. PIAZZA: I'm sorry?

8 THE COURT: Do you want this testimony?

9 MR. PIAZZA: Well, I don't see how they can introduce  
10 this unless they can show other documents to show that --

11 THE COURT: I agree that they will have to do that, to  
12 connect the relevance.

13 MS. PARKER: Judge, I will proffer that there is a  
14 document that we will get to that's -- where Mr. Pochmara  
15 certifies receipt of these forms. I have to do it in some  
16 sequence.

17 THE COURT: I agree. But the only -- I agree. The  
18 only question I'm asking is, if you want that presentation.

19 MS. PARKER: They don't -- if Mr. Piazza doesn't want to  
20 stipulate, I've got to prove it.

21 MR. PIAZZA: Yes.

22 THE COURT: I will overrule the objection.

23 (Whereupon sidebar concluded)

24 THE COURT: You may continue.

25 MR. PIAZZA: Your Honor, my objection is overruled at

1 this time?

2 THE COURT: Yes.

3 MS. PARKER: So the exhibits are received, your Honor?

4 THE COURT: Without --

5 MR. PIAZZA: I'm sorry.

6 THE COURT: They are received contingent upon the  
7 introduction of the additional testimony that we've talked about.

8 You may continue.

9 MS. PARKER: May I ask that they be displayed?

10 THE COURT: You may.

11 MS. PARKER: All right. I believe the Court needs to --

12 THE COURT: It should be on.

13 MS. PARKER: While that is being -- there they go.

14 BY MS. PARKER:

15 Q. All right. Can you see on Exhibit 10 in front of you?

16 A. Yes.

17 Q. All right. And you indicated that is the type of document  
18 that was routinely provided to retirees?

19 A. Yes.

20 Q. Or employees, excuse me.

21 A. Applicants, yes.

22 THE COURT: Miss Parker, if I could have just a moment.  
23 If the folks that are in the front row could just gently lift the  
24 display, it makes it's much easier for the folks in the back to  
25 be able to see at the same time.

1           You may continue, ma'am.

2 BY MS. PARKER:

3 Q. All right. I would like to direct your attention, excuse  
4 me, to Page 13 of Exhibit 10. You have it there?

5 A. Yes. Yes.

6 Q. Okay. Open to Page 13 of Exhibit 10. What's the caption  
7 there?

8 A. How Earnings Affect Your Annuity.

9 Q. Let me ask you this before we get too involved in this.  
10 What's an annuity?

11 A. An annuity is basically a retirement benefit that is  
12 composed of two components, a Tier I component and a Tier II  
13 component.

14 Q. All right. It's basically what you can get upon retirement,  
15 whether you're on disability or having completed enough years of  
16 service.

17 A. That's correct.

18 Q. Do employees have to pay into this system to become eligible  
19 for an annuity?

20 A. Yes.

21 Q. How are those payments made?

22 A. Through their earnings. They -- while working, they  
23 contribute to a Tier I and Tier II tax, while working for the  
24 railroad, and if they have any outside railroad earnings, meaning  
25 non-railroad employment, they are still contributing towards

1 Social Security benefits.

2 Q. So how does the Railroad Retirement Board keep track of  
3 those payments made by the employees?

4 A. We receive yearly reports from the Social Security  
5 Administration.

6 Q. And are Social Security numbers used to keep track of those  
7 payments?

8 A. Yes.

9 Q. And the person's name?

10 A. Yes.

11 Q. And is that information then that is shared between the  
12 Railroad Retirement Board and the Social Security Administration  
13 and the IRS?

14 A. Yes.

15 Q. And would you then receive -- that is, you being the  
16 Railroad Retirement Board, receive any reports of non-railroad  
17 earnings reported under a person's name and Social Security  
18 number?

19 A. Yes, that is also included.

20 Q. All right. Now, again, referring to Page 13 of Chapter  
21 10, in this section here, are you referring to retirement in  
22 general?

23 A. I don't think I understand your question.

24 Q. All right. Would this -- this Chapter 10, How Earnings  
25 Affect Your Annuity, would that apply both to people who

1 retire on disability and people who retire at the end of their  
2 service?

3 A. This would -- this paragraph or this statement, is referring  
4 to regularly retired people.

5 Q. Okay. Are there special rules that apply to people who  
6 retire on disability?

7 A. Yes.

8 Q. All right. I would like to ask you to refer to Exhibit 11,  
9 Page 7. Do you see that?

10 A. Yes.

11 Q. Now, on that particular page -- again, what was the title of  
12 that booklet that's Exhibit 11?

13 A. That's Employee Disability Benefit Booklet.

14 Q. All right. And on Page 7 of that booklet, does that address  
15 how work or other income can affect disability retirement  
16 payments?

17 A. Yes. It is specific to that.

18 Q. Now, again, going back to your duties, have you actually  
19 personally been involved in counseling a person who is applying  
20 for disability retirement?

21 A. Yes.

22 Q. And would this be something that you would discuss with  
23 them?

24 A. Yes.

25 Q. Now, in this page of this booklet, is that something that

1 you would address?

2 A. Yes.

3 Q. Why?

4 A. It is pertinent for them to know this information. It is  
5 detrimental towards receiving and continuing to receive the  
6 benefit without any type of overpayments involved or just  
7 continuance of the benefit.

8 Q. And during this -- in this booklet, it points out that there  
9 is an earnings restriction. Do you see that?

10 A. Yes.

11 Q. What was the earning restriction?

12 A. It was four hundred a month for disability annuitants.

13 Q. When you say it was, did that change?

14 A. It did. It changed recently. I'm not quite sure of the  
15 year but it did increase on a monthly basis.

16 Q. Do you recall what it is even today?

17 A. Today, it is \$810 a month for 2013.

18 Q. Okay. So going -- looking again, if you will, at the first  
19 page of Exhibit 11, do you see a date there for that booklet?

20 A. Okay. It is September of '89.

21 Q. Okay. Can you go back to the first page, please. Can you  
22 explain where you see that?

23 A. On the front of the booklet?

24 Q. Correct.

25 A. At the bottom right-hand corner.

1 Q. All right. That's the top. I'm sorry. Below the exhibit  
2 sticker?

3 A. Yes.

4 Q. Okay. So it says Form RB-1d. What does that mean to you?

5 A. That is the government's form number assigned to the booklet  
6 for employee disability benefits.

7 Q. All right. And the D indicates disability.

8 A. Yes.

9 Q. All right. And in parentheses, 9-89?

10 A. That is the revision date.

11 Q. Okay. And so that would have been in effect up until the  
12 time of the next revision.

13 A. Yes.

14 Q. And did it remain \$400 for quite some time?

15 A. Yes.

16 Q. And that \$400 limit applied to a month?

17 A. Per month, yes.

18 Q. Not week but month.

19 A. Per month.

20 Q. And what are the potential consequences to earning more than  
21 \$400 a month for work?

22 A. Once -- once it's discovered or reported to us, it would  
23 immediately stop the benefit.

24 Q. All right. I would like to ask you if there is a  
25 requirement to report activities that are not resulting in a



1 paycheck.

2 A. Yes.

3 Q. And how is that?

4 A. We -- we require that any work is reported. And the reason  
5 why is because when a person is disabled, the type of work that  
6 they are performing could be in conflict with the type of  
7 disability that they were approved for.

8 Q. So if they are doing volunteer work for Habitat for  
9 Humanity, putting roofs on houses, even if they are not getting  
10 paid, that might be inconsistent with their disability?

11 A. It could definitely affect their disability payments due to  
12 the conflict, depending on what their disability is.

13 Q. I would like to ask you to go on to Exhibit 12. Again, are  
14 you familiar with that document?

15 A. Yes.

16 Q. And what's the title of that document?

17 A. Employee and Spouse Annuities, Events That Must be Reported.

18 Q. All right. And can you look at Page 10 of that document?  
19 Again, there is an explanation there regarding earnings and  
20 disabilities?

21 A. Yes.

22 Q. And again, you still see the same \$400 limit?

23 A. Yes.

24 Q. And what's the form number on this form?

25 A. That is a RB-9.

1 Q. And the date on this version that you have?

2 A. January, '94.

3 Q. Okay. And at the top, it has the notation, revised.

4 A. Ah, 11 of '99.

5 Q. All right. So that would have been at least through '99,  
6 the operative amounts?

7 A. Yes.

8 Q. And again, would you, in the course of preparing someone to  
9 retire on disability, explain these items to the person?

10 A. Yes.

11 Q. Once the person is on disability, do they receive any  
12 reminders regarding the need to report work activities or  
13 income?

14 A. Yes, yearly reminders.

15 Q. I would like to ask you to look at Exhibit 13A. Do you have  
16 the actual exhibit in front of you?

17 A. Yes.

18 Q. Can you hold that up for us? So that's a document that's  
19 kind of almost the size of a legal envelope?

20 A. Yes.

21 Q. And how would that be used to notify a person on disability  
22 retirement of the obligations?

23 A. It's very specific and brief. However, the specifics of  
24 it definitely says that any work, anyone going over the limit  
25 would --

1 Q. Okay. Let me ask you this way. Is this something that  
2 would be mailed out to the person?

3 A. Yes, definitely.

4 Q. And the form number on this is, again, on 13A?

5 A. RL-4.

6 Q. And the particular revision date on 13A is?

7 A. August of '94.

8 Q. Okay. And on the back of it, do you see where it says:

9 "You must notify the Railroad Retirement Board"?

10 A. Yes.

11 Q. All right. What is the first point after that?

12 A. "If you perform any work," and "any" is in all caps.

13 Q. And is there a parenthesis?

14 A. "Including self-employment," is in parentheses.

15 Q. And then below that, there is another section that goes:

16 "You must return your annuity payment for any month," and then  
17 the second bullet there?

18 A. "Your earnings exceed \$400 after deduction of  
19 disability-related work expenses, regardless of your  
20 employer."

21 Q. Let's go on to Exhibit 13B. Is this kind of like 13A, same  
22 size?

23 A. Yes.

24 Q. Two-sided mailing?

25 A. Yes.

1 Q. And then on -- this is the revision that was done when?

2 A. This one is August, 2001.

3 Q. All right. So let's look at the back of that one. Again,  
4 at the top, it says: "You must notify the Railroad Retirement  
5 Board." What's the first bullet point there?

6 A. "If you perform any work (including self-employment)," in  
7 parentheses.

8 Q. And then below that: "You must return your annuity payment  
9 for any month," and what's the second bullet point there?

10 A. "Your earnings exceed \$400 after deduction of  
11 disability-related work expenses, regardless of your  
12 employer."

13 Q. All right. And then going to Exhibit 13C, is that still a  
14 RL-4?

15 A. Yes.

16 Q. But it's a slightly different format.

17 A. Yes.

18 Q. It's a full sheet of paper.

19 A. Yes.

20 Q. And again, the date of this revision?

21 A. March, 2007.

22 Q. Okay. And it says at the top: "You must notify the  
23 Railroad Retirement Board." What's the first bullet point?

24 A. "If you perform work, including self-employment  
25 for a family-owned, controlled or managed business,

1 including a business, operated, managed or owned by  
2 you, a family member, friend or close associate, whether  
3 for pay or not, without regard to how the business is  
4 organized."

5 Q. And then there is a parenthesis?

6 A. "For example, sole proprietorship, partnership,  
7 corporation, LLC, et cetera."

8 Q. All right. And the third bullet point?

9 A. "If you become a corporate officer of, own or  
10 operate a corporation (including a corporation owned  
11 by a family member or friend) whether for pay or not."

12 Q. And even the next one below that.

13 A. "If you receive anything of value in lieu of  
14 salary or wages for any work that you perform."

15 Q. All right. Going down near to the bottom of the page, it  
16 says: "You must return your annuity for any month that you work  
17 for --" do you see that part?

18 A. Yes.

19 Q. Would you continue reading that for us?

20 A. "That you work for a railroad employer and you  
21 must return your annuity if your earnings exceed \$700  
22 after deduction of disability work expenses, regardless  
23 of your employer."

24 Q. And just for the sake of the record here, the first exhibit,  
25 Exhibit 10, what is the form number on that?

1 A. Exhibit 10 is RB-1 form.

2 Q. Okay.

3 MS. PARKER: May I approach the witness, your Honor?

4 THE COURT: You may.

5 BY MS. PARKER:

6 Q. I would like to show you two more Government's Proposed  
7 Exhibits, Exhibit 20 and 21. Do you recognize those?

8 A. Yes.

9 Q. What are those? Let me ask you this way. What is  
10 Government's Proposed Exhibit 21?

11 A. Twenty-one is a form for Application for Employee Annuity.

12 Q. Okay. And what is Exhibit 20?

13 A. Exhibit 20 is Application for Determination of Employee  
14 Disability.

15 Q. Are these forms that you're familiar with?

16 A. Yes.

17 Q. Are these the type of forms that you use in the ordinary  
18 course of your employment?

19 A. Yes.

20 Q. Day in and day out.

21 A. Yes.

22 Q. And are these particular forms relating to Robert Pochmara?

23 A. Yes.

24 Q. All right.

25 MS. PARKER: Your Honor, I offer Government's Proposed

1 Exhibits 20 and 21.

2 THE COURT: Any objections?

3 MR. PIAZZA: Well, your Honor, I would object to both of  
4 these. It appears to be a signature by somebody but there is no  
5 one authenticating the signature of Robert Pochmara in either one  
6 of these exhibits.

7 THE COURT: Perhaps as to the signature but she can  
8 furnish her testimony with respect to the authentication, which I  
9 believe she has. So while the signature is inadmissible at this  
10 juncture, the balance of the exhibits is.

11 BY MS. PARKER:

12 Q. All right. I would like to ask you then to look at Exhibit  
13 21 and have that displayed, please. Okay. Again, you indicated  
14 this is an application form for Robert Pochmara.

15 A. Yes.

16 Q. And is that the original application form?

17 A. Yes.

18 Q. All right. When was that officially filed?

19 A. June 18th, 1992.

20 Q. Okay. And I notice on Line 1, it says: "My RRB claim  
21 number is Axxx-xx-6475." And then below that: "My Social  
22 Security number is xxx-xx-6475." Are those pretty much identical  
23 numbers?

24 A. Yes. The difference is that the Railroad Retirement Board  
25 assigns a claim number which is normally the railroad employee's

1 Social Security number preceded by the letter A.

2 Q. So the Social Security number again is used to track the  
3 disability claimant and the person receiving payments.

4 A. Yes.

5 Q. Can you explain to the jury how this form is used in the  
6 process of a person -- how Robert Pochmara would have used this  
7 in the process of applying for disability insurance from the  
8 railroad?

9 A. Whenever a railroad employee files for retirement benefits,  
10 we use an application for an employee annuity. We ask  
11 identifying information about themselves, their marriage, their  
12 railroad employment, their non-railroad employment, any other  
13 benefits that are being paid such as public service or  
14 non-covered service pensions. We even ask about Social Security  
15 benefits.

16 If we -- we ask if they are receiving any supplemental  
17 benefits from the railroad employer. Generally, we also use this  
18 application as their Medicare application, to have them apply for  
19 it when they retire, even though they are not age-qualified at  
20 the time. And we have them sign a certification to the  
21 information that they provided to us.

22 Q. All right. And let me just make sure we clarify one thing.  
23 Exhibit 21 would be used to apply for railroad retirement of any  
24 kind, whether it's old-age retirement or disability?

25 A. Yes.



1 Q. All right. But this would be, like, step one of the  
2 process.

3 A. Yes.

4 Q. And you rely on the information that is provided in this  
5 form.

6 A. Yes.

7 Q. Okay. I would like to ask you to turn to the next to the  
8 last page of this document. Do you see certain information  
9 contained there that would -- would that information have been  
10 discussed with the person who is applying for retirement?

11 A. Yes.

12 Q. Okay. And on this document, was there an agreement  
13 being made by the applicant, Robert Pochmara, to provide  
14 notification?

15 A. Yes.

16 Q. And that would include notification of work.

17 A. Yes.

18 Q. All right. And then going to the last page, can you read  
19 for us what is there over the certification?

20 A. "Also, if I am covered by the earnings restriction  
21 provisions of the Railroad Retirement Act, I agree to  
22 immediately notify the RRB if I earn more than the  
23 annual earnings exempt amount. Failure to report my  
24 earnings on a timely basis may result in a penalty  
25 deduction from my annuity."

1 Q. Now, below that, there is the word Certification. Do you  
2 see that?

3 A. Yes.

4 Q. And what purports to be the signature of Robert Pochmara.

5 A. Yes.

6 MR. PIAZZA: Well, I'm going to object to that, your  
7 Honor. There is no authenticity of that, that it is actually  
8 Robert Pochmara's signature there, unless this witness observed  
9 him signing it in front of her. That's the only way she can  
10 testify to that.

11 MS. PARKER: Your Honor, I asked the question, I think,  
12 in an appropriate manner in light of that objection.

13 THE COURT: Overruled.

14 BY MS. PARKER:

15 Q. Would there be reason to believe that that is in fact the  
16 signature of Robert Pochmara?

17 A. Can you repeat that?

18 Q. Would there be reason, based on the application and the  
19 process that you're familiar with, to believe that that is a  
20 document that was signed by Robert Pochmara?

21 A. Yes.

22 Q. Explain that to us, please.

23 A. In a case of a disability, we, at one point, at the Railroad  
24 Retirement Board, were required to do a personal observation for  
25 disability applicants. So the application would have been signed

1 in front of a rep because of the fact that they were filing for  
2 disability.

3 Q. And that's the day-to-day practice of the Railroad  
4 Retirement Board.

5 A. Yes.

6 Q. And was -- you reviewed the claimant's file for this -- for  
7 Mr. Pochmara's file?

8 A. Yes.

9 Q. And did you find the record relating to the personal meeting  
10 between the claimant and the person from the Railroad Retirement  
11 Board processing the claim?

12 A. Yes.

13 Q. Thank you. Now, let's go on to Exhibit 20. How does  
14 Exhibit 20 differ from Exhibit 21?

15 A. Well, the Exhibit 20 is where the railroad employee has an  
16 opportunity to provide us with the information regarding his  
17 disability. It -- it has various things, ranging from the  
18 diagnosis of the disability, the medications that have been  
19 prescribed, when it began to affect his ability to work, the  
20 doctors and hospitals he's been to. It -- it also asks about  
21 education but also, work, any other work that was performed.

22 Q. All right. And would this Exhibit 20 be completed by  
23 somebody who was just retiring based on age?

24 A. No, it would not be necessary.

25 Q. All right. This is just for disability retirement.

1 A. This is for disability.

2 Q. And again, the date on this document? When was it filed?

3 A. It was filed June 18th, 1992.

4 Q. Same date as Exhibit 21.

5 A. Yes.

6 Q. All right. I would like to ask you to again turn to the  
7 certification at the -- inside the last page. Do you see that?

8 A. Yes.

9 Q. And again, is there a signature of Robert J. Pochmara  
10 there?

11 MR. PIAZZA: Again, your Honor, objection. We don't  
12 know the authenticity as to whether it's Robert Pochmara's actual  
13 signature or not.

14 THE COURT: That wasn't the question. That wasn't the  
15 question.

16 MR. PIAZZA: Okay.

17 THE COURT: Overruled.

18 BY MS. PARKER:

19 Q. I would like to ask you to start reading where there is a  
20 little 64. Do you see where I'm talking about?

21 A. Yes.

22 Q. All right. "I know --"

23 A. "I know that if I make a false or fraudulent  
24 statement in order to receive benefits from the RRB,  
25 I am committing a crime which is punishable under

1 federal law."

2 "I have received the appropriate application  
3 booklet, Employee Disability Benefits, RB-1d. I also  
4 understand that I am responsible for reporting any  
5 events that would affect my annuity as explained in  
6 that booklet."

7 "I certify that the information I gave the RRB  
8 on this application is true to the best of my  
9 knowledge. I agree to immediately notify the RRB  
10 if I perform any work (including self-employment)."

11 "If my condition improves --"

12 Q. All right. I think we can stop there for now. And just for  
13 clarification, RRB stands for Railroad Retirement Board?

14 A. RRB stands for Railroad Retirement Board, yes.

15 Q. And the Employee Disability Benefits, RB-1d, that's Exhibit  
16 11?

17 A. Yes.

18 Q. All right. And this has the signature date of what?

19 A. June 7th, 1992.

20 Q. Next, I would like to show you Government's Proposed  
21 Exhibits 22 and 23. Exhibit 22 is a document entitled,  
22 Statement Regarding Family and Earnings for Special Guarantee  
23 Computation, is that correct?

24 A. Yes.

25 Q. And is that for Robert Pochmara?

1 A. Yes.

2 Q. And Exhibit 23 is a Continuing Disability Report, also for  
3 Robert Pochmara?

4 A. Yes.

5 Q. Are these from the files of the Railroad Retirement Board?

6 A. Yes.

7 Q. Are these forms that you use in the day-to-day processing  
8 and making of payments to railroad disability retirees?

9 A. Yes.

10 MS. PARKER: Your Honor, I offer Government's Proposed  
11 Exhibits 22 and 23.

12 THE COURT: Any opposition?

13 MR. JACOBS: I don't have any objection, your Honor.

14 MR. PIAZZA: I have an objection relating to it's  
15 purportedly signed by an individual and, of course, that's not  
16 been authenticated so --

17 THE COURT: We will overrule the objection. We will  
18 receive the -- we will receive the exhibits.

19 MS. PARKER: All right.

20 MR. PIAZZA: Your Honor, I hate to interrupt. May  
21 I have a continuing objection regarding these documents  
22 regarding any purported signatures purportedly to be of Robert  
23 Pochmara?

24 THE COURT: The witness has not been asked to testify  
25 that the signature was in fact of Robert Pochmara. She has

1 testified concerning the circumstances of the administration of  
2 her records related to the claim made by a Robert Pochmara.

3           You may continue, ma'am.

4           MS. PARKER: Thank you.

5 BY MS. PARKER:

6 Q. All right. I would ask you to turn to Exhibit 22, and  
7 going to the last page, just above the signature, do you see a  
8 box 47?

9 A. Yes.

10 Q. And just -- after the bullet points, can you see, "Also, I  
11 agree"?

12 A. Yes.

13 Q. What does that say?

14 A. "Also, I agree to immediately notify the RRB  
15 if I earn, or a family member included in the annuity  
16 computation earns, more than the annual earnings exempt  
17 amount. Failure to report these earnings on a timely  
18 basis may result in penalty deductions from the  
19 annuity."

20 Q. And again, does it have various promises to report events  
21 that would affect the annuity?

22 A. Yes.

23 Q. And what was the date on this form?

24 A. It -- the signature date?

25 Q. Yes.

1 A. June 4th, 1994.

2 Q. And would this have been used and relied on by the Railroad  
3 Retirement Board in processing Robert Pochmara's application for  
4 disability benefits?

5 A. It -- yes.

6 Q. All right. And this -- this relates more to what other  
7 people might be able to claim under his disability?

8 A. Yes.

9 Q. But it reiterates the requirement of notifying about  
10 events.

11 A. Yes.

12 Q. All right. Let's go on to Exhibit 23. Are you familiar  
13 with the use of this document?

14 A. Yes.

15 Q. And can you -- give us the title of this document.

16 A. Continuing Disability Report.

17 Q. And how is this document used by the Railroad Retirement  
18 Board?

19 A. It is used to, in some -- it is used to monitor and review a  
20 person's disability status.

21 Q. And are -- are there different kinds of things that would  
22 trigger sending out this form?

23 A. Yes. If you have earnings that have been reported to us,  
24 whether it be railroad earnings or non-railroad earnings, or if  
25 we receive a report of earnings from the actual disability



1 annuitant.

2 Q. All right. In this case, did you ever receive a report of  
3 earnings from the annuitant -- you being the Railroad Retirement  
4 Board, not you personally, I'm sorry -- of the annuitant Robert  
5 Pochmara receiving earnings?

6 A. No, not from Robert Pochmara.

7 Q. Did you receive some information that he might be receiving  
8 earnings, however?

9 A. Yes.

10 Q. And what was the nature of that information?

11 A. That he was possibly -- well, that he was actually working,  
12 that they witnessed that they actually saw him working.

13 Q. All right.

14 A. And this was a statement from an anonymous person.

15 Q. So an anonymous person notified the Railroad Retirement  
16 Board and said that they saw Robert Pochmara working.

17 A. Yes.

18 Q. And that caused the Railroad Retirement Board to send out  
19 Exhibit 23?

20 A. Yes.

21 Q. All right. And just -- again, what's the form number on  
22 this document?

23 A. This is a G-254.

24 Q. And this was sent to Robert Pochmara.

25 A. Yes.

1 Q. And it's a multi-paged document but can you tell us the type  
2 of information you were seeking?

3 A. We asked about work of any kind and earnings. We also asked  
4 about whether or not their disability has gotten worse or if it  
5 has improved.

6 Q. And on this document, was any work or earnings reported?

7 A. The first question required to be answered is:

8 "Have you worked for an employer, railroad or  
9 non-railroad, during the period shown in Section 1  
10 above?"

11 And that period is May 20, 1991, to present. The answer  
12 was no. And there is no other information completed in regard to  
13 working or earnings. As a matter of fact, the applicant skips to  
14 the next section which is Section 4, without completing anything  
15 else that's required.

16 Q. And Section 4 deals with the physical complaints.

17 A. No, actually Section 4 is about self-employment but it is  
18 also blank because it is not required if you are not  
19 self-employed -- if you are reporting that you're not  
20 self-employed. The next section is where you get the physical --  
21 you know, the information about the disability.

22 Q. All right. So from the first page where it says no  
23 employment, no information is provided until you get to Section 5  
24 which is regarding the physical condition.

25 A. Yes.

1 Q. All right. I would like to ask you to turn to Section 7  
2 which is the authorization and certification. Do you see  
3 Paragraph 37?

4 A. Yes.

5 Q. That first paragraph, can you read that for us?

6 A. "I understand that civil and criminal penalties  
7 may be imposed upon me for false or fraudulent  
8 statements or for withholding information to  
9 misrepresent a fact or facts material to  
10 determining a right to benefits under the Railroad  
11 Retirement Act. I affirm that to the best of my  
12 knowledge, the information I have provided on this  
13 form is true, complete, and correct."

14 Q. And then the next paragraph, please?

15 A. "I have received the appropriate application  
16 booklets, RB-1d, Employee Disability Benefits, and  
17 RB-9, Employee and Spouse Events That Must be  
18 Reported. I understand that I am responsible for  
19 reporting any events that would affect my annuity as  
20 explained in these booklets."

21 Q. All right. And finally, the last paragraph above the  
22 purported signature.

23 A. "I authorize the Railroad Retirement Board to  
24 secure any information from the Social Security  
25 Administration which is required to determine my

1 continuing entitlement to benefits under the Railroad  
2 Retirement Act."

3 Q. And does the Social Security -- excuse me -- does the  
4 Railroad Retirement Board keep track of payments that would be  
5 made to each person receiving payments under the Railroad  
6 Retirement Board?

7 A. Yes.

8 MS. PARKER: Your Honor, may I approach the witness?

9 THE COURT: You may. So I will note we will be trying  
10 to locate a time to take a break here shortly.

11 MS. PARKER: Yeah, I'm almost done. I have a couple  
12 more exhibits. It should be fairly quick.

13 THE COURT: Good.

14 BY MS. PARKER:

15 Q. I show you Government's Proposed Exhibit 26. Is that a  
16 document that reflects the various monthly payments made to  
17 Robert Pochmara from January of 1998 through April of 2013?

18 A. Yes.

19 Q. And is that the type of data that is ordinarily kept by the  
20 Railroad Retirement Board?

21 A. Yes.

22 MS. PARKER: Your Honor, I offer Government's Proposed  
23 Exhibit 26.

24 THE COURT: Any opposition to 26? Gentlemen?

25 MR. PIAZZA: Yes. I have no comment, your Honor.

1 MR. JACOBS: No objection, your Honor.

2 THE COURT: Exhibit 26 is received.

3 BY MS. PARKER:

4 Q. And next, I would like to show you Government's Proposed  
5 Exhibits 27 and 28. Do you recognize what those documents are?

6 A. Yes.

7 Q. Do you have a name that you call them in the Railroad  
8 Retirement Board?

9 A. Yes, it's -- it's an acronym, we call DEQY.

10 Q. And what really is a DEQY, in common language for the rest  
11 of us?

12 A. Detailed Covered FICA Earnings and Employer.

13 Q. And Exhibit 27 is for a M. Pochmara?

14 A. Yes.

15 Q. And Exhibit 28 is for?

16 A. R.J. Pochmara.

17 MS. PARKER: Your Honor, I will offer Government's  
18 Proposed Exhibits 27 and 28.

19 THE COURT: Gentlemen?

20 MR. PIAZZA: I'm not sure the prosecution has indicated  
21 this is kept in the ordinary course of this witness's business.  
22 It appears to be from another agency so --

23 MR. JACOBS: I just have a brief voir dire, your Honor.

24 THE COURT: Sir.

25 MR. JACOBS: Thank you, your Honor.

1 BY MR. JACOBS:

2 Q. Ma'am, if I'm reading this right, it shows, is it gross  
3 earnings? Like we are looking at Exhibit 27. Is that Maxine  
4 Pochmara's gross earnings for a particular year, the \$16,953?

5 A. Yes.

6 Q. All right. And then the wage total is the same number so  
7 that's her gross earnings, is that correct?

8 A. Yes.

9 Q. And what does the employer total mean? That was what was  
10 reported by her employer? Is that what that means? I'm just  
11 trying to figure out what -- so the next number, which is the  
12 same as the last two, says \$16,953.38, and it says in front of  
13 that, employer total. Is that a number that came from the  
14 employer?

15 A. Yes.

16 Q. All right. These are just gross earnings. Does it show any  
17 deductions as far as Social Security taken out or -- or any  
18 deductions by the employer, like FICA and things like that?  
19 It's just gross earnings?

20 A. Yes.

21 MR. JACOBS: Nothing further, your Honor. I don't have  
22 any objection to it.

23 THE COURT: Received.

24 BY MS. PARKER:

25 Q. All right. I think Mr. Jacobs used a term FICA or F-I-C-A.

1 What does that mean to you?

2 A. It's another acronym but it just shows that Social Security  
3 taxes were withheld from earnings.

4 Q. Would you first refer to Exhibit 28? You indicated that was  
5 a DEQY report for Mr. Pochmara?

6 A. Yes.

7 Q. And again, that was the type of form that you have access  
8 to, you get this information through Social Security.

9 A. Yes.

10 Q. And for Mr. Pochmara, what time period does this report  
11 cover?

12 A. From 1998 through 2013.

13 Q. And how do you know that?

14 A. It actually states it on the -- on the print-out.

15 Q. Like the second line from the top?

16 A. Yes. Years requested is where it says it.

17 Q. All right. So it was for 1998 to 2012.

18 A. 2013.

19 Q. Excuse me, 2013, I misspoke. And below there, what  
20 purported earnings were listed under Mr. Pochmara's Social  
21 Security number?

22 A. It says no covered FICA earnings posted for years  
23 requested and it also says no non-covered earnings for years  
24 requested.

25 Q. So for those years, no reported earnings for Robert

1 Pochmara.

2 A. Yes, that's correct.

3 Q. Okay. Let's go to Exhibit 27. This one is for M.C.

4 Pochmara. Correct?

5 A. Yes, that's correct.

6 Q. And what is the time frame covered by this request?

7 A. The years requested is 1998 through 2012.

8 Q. And the time frame -- excuse me. On the first page, do you  
9 see what time frame is covered by that first page?

10 A. Yes.

11 Q. And what do you see there?

12 A. 1998.

13 Q. And where do you see that?

14 A. Under -- it's another acronym, RPYR, report year.

15 Q. So if you were describing where it is on the page, is it on  
16 the left side?

17 A. It is on the left side.

18 Q. About halfway down?

19 A. About halfway down.

20 Q. And RPYR would be right over that?

21 A. Yes.

22 Q. Reporting year?

23 A. Yes.

24 Q. So that would be for 1998.

25 A. Yes.



1 Q. And on this page, how many sources of income are listed for  
2 M. Pochmara?

3 A. On this page, it is two different sources of income, two  
4 different employers.

5 Q. And what are those?

6 A. The first one is Northeast Michigan Community Mental Health  
7 Board. And the second one is GW & SW, Incorporated, W.W. Auto  
8 Parts.

9 Q. And where is that located?

10 A. The second one?

11 Q. Yes.

12 A. It's Rogers City, Michigan.

13 Q. And then each successive page would be a different year?

14 A. Yes.

15 MS. PARKER: Your Honor, apparently, I neglected to  
16 explain Government's Proposed Exhibit 26. I would like to do  
17 that briefly before passing the witness.

18 Q. And again, that is an earnings report through last month,  
19 basically. Is that correct?

20 A. Can you say that again?

21 Q. Exhibit 26 covers payments made to Mr. Pochmara up to April  
22 of this year.

23 A. Yes, that's correct.

24 MS. PARKER: Thank you, your Honor. I'll pass the  
25 witness.

1 THE COURT: Let's take a brief recess, about ten  
2 minutes. The gentleman should be here in just a couple of  
3 minutes.

4 Please rise for the jury.

5 (At 10:50 a.m. - jury leaves courtroom)

6 THE COURT: We are outside the presence of the jury.

7 I just want to raise an issue. I mean, we essentially  
8 anticipated about three days of proofs with respect to -- for the  
9 government. This -- the last hour and a half is largely  
10 unrelated to these defendants but is admissible to the extent  
11 that it explains the motive for Mr. Pochmara's practice.

12 How long do you anticipate cross-examination?

13 MR. JACOBS: Mine, less than ten minutes.

14 THE COURT: Okay. Will we have any other proofs from  
15 the Railroad Retirement Benefit Board that relate to Mr. Pochmara  
16 alone? Or are we essentially done at this point?

17 MS. PARKER: We have -- yes, the forms that I believe  
18 the Court is familiar with that were sent out by the OIG at the  
19 initiation of the investigation. We are done with the forms from  
20 Miss Smith, from the claim file. We are into the next phase  
21 after this witness.

22 THE COURT: Which was the investigation.

23 MS. PARKER: Correct.

24 THE COURT: And which, at least at that juncture, does  
25 involve the defendants.

1 MS. PARKER: Absolutely. As you know, there are  
2 documents signed by Mrs. Wilson.

3 THE COURT: All right. We will see you in about ten  
4 minutes.

5 (At 10:52 a.m. - proceedings recessed)

6 (At 11:13 a.m. - proceedings resumed; out of the  
7 presence of the jury)

8 THE COURT: Could we have the jury, please. Ma'am, if  
9 you would like to rejoin us, please. We have a special place for  
10 you.

11 (At 11:15 a.m. - jury enters courtroom)

12 THE COURT: Please be seated. Cross-examination.

13 CROSS-EXAMINATION

14 BY MR. JACOBS:

15 Q. Ma'am, my name is Steve Jacobs. I represent Gary Wilson.  
16 As far as you know, Gary Wilson was never a railroad employee,  
17 was he?

18 A. Not as far as I know.

19 Q. And when we talk about these various exhibits, like Exhibit  
20 No. 10, the employee annuity form, the very first exhibit you  
21 talked about, that goes to the railroad employee, is that  
22 correct?

23 A. Yes.

24 Q. Doesn't go to third parties, correct?

25 A. Goes to the applicant.

1 Q. Goes to the applicant. The other documents -- well, let's  
2 talk specifically about 20 and 21, the Application for  
3 Determination of Employee Disability, that is filled out by the  
4 employee and -- the prior employee. Is that confidential between  
5 the railroad employee and the railroad retirement people? Can I,  
6 as a third party, get a hold of that?

7 A. No, not to my knowledge.

8 Q. Right. That's -- that doesn't go out to third parties. It  
9 just goes from the applicant in to you all, is that correct?

10 A. Yes.

11 Q. You're not aware of any notice requirement being sent out to  
12 NAPA Auto Parts or Gary Wilson informing him that he had any  
13 requirement to report any earnings of Robert Pochmara, are you?

14 A. No.

15 Q. Specifically, on Exhibit No. 21, that's this application,  
16 kind of a print-out, does -- does it say on there, am I reading  
17 that correctly, that: "My marriage to this spouse ended December  
18 31st, 1984"? Is that what's on the form?

19 A. Yes.

20 Q. And that information was provided by Mr. Pochmara.

21 A. Yes.

22 Q. Now, we don't do any independent examination or confirmation  
23 of when somebody got married or when somebody got divorced or  
24 anything like that, do we?

25 A. At the Railroad Retirement Board, yes.

1 Q. Oh, they do.

2 A. Yes.

3 Q. So you're telling me that they confirmed that his marriage  
4 ended December 31st, 1984. Somebody.

5 A. For -- we request a marriage certificate and in certain  
6 cases, we also request a divorce decree.

7 Q. And do we know if we requested a divorce decree?

8 A. The only way that we would have is if he had a property  
9 settlement and as far as I can tell on this application, it says  
10 that he is not under current -- or under a court order to pay a  
11 property settlement.

12 Q. So child support, something like that?

13 A. Right.

14 Q. So my question to you is, do you believe that the railroad  
15 retirement people confirmed that he was divorced on December  
16 31st, 1984?

17 A. We probably went by his statement.

18 Q. Sure. If he put down the wrong date and he was really  
19 divorced in '81, we would put down whatever date he told us.

20 A. Yes.

21 Q. Is that fair to say?

22 A. Yes.

23 Q. These earning restrictions and earning requirements, I  
24 believe it's Exhibit 27 we talked about -- whoops, I might be  
25 saying the wrong number. I am.

1           Exhibit 22, you pointed out that right before his  
2 signature, it says:

3           "I agree to notify the RRB, Railroad Retirement  
4 Board, if I earn, or a family member included in my  
5 annuity computation, earns more than the annual  
6 earnings exempt amount."

7           Is that correct?

8 A.   Yes.

9 Q.   All right. So if Mr. Pochmara's wife earned money, he was  
10 supposed to report that, is that correct?

11 A.   Yes.

12 Q.   All right. When -- when, annually, a notice goes out, a  
13 form goes out and is referred to as a 1099 by the tax people, a  
14 1099 form goes out to the recipient regarding railroad -- United  
15 States Railroad Retirement Board, and it notes the total gross  
16 paid, is that correct?

17           MS. PARKER: Your Honor, I'm going to object. I think  
18 this is beyond the scope of direct.

19           MR. JACOBS: It is beyond the scope of direct but it is  
20 a 1099 that was issued by the Railroad Retirement Board. She is  
21 their representative. It is my understanding that other than the  
22 agent, she is going to be the witness for them.

23           May I approach and show it to her?

24           THE COURT: I'm sorry. I'm not exactly sure what you're  
25 asking the witness. Could you explain it one more time?

1 MR. JACOBS: I would like her to explain the 1099 and I  
2 would like her to point out that the 1099 that is received by  
3 the participant, by the -- by the people receiving the benefits  
4 or monies, that it doesn't distinguish whether it's between  
5 disability monies or pension monies. That's what I will be  
6 asking her, your Honor.

7 THE COURT: And the relevance?

8 MR. JACOBS: Relevance as to third party's notice, such  
9 as a CPA or an accountant doing somebody's taxes, which will  
10 become an issue on a later day here, your Honor.

11 THE COURT: Overruled.

12 MR. JACOBS: Thank you, your Honor.

13 BY MR. JACOBS:

14 Q. Ma'am, I got a 1099 that's attached to Government's Proposed  
15 Exhibit 146.

16 MS. PARKER: Judge, I will stipulate to the exhibit and  
17 the information contained in it.

18 MR. JACOBS: All right. I appreciate that stipulation  
19 from the government. I would just like the witness to  
20 acknowledge that there is no distinction on the form between  
21 whether it's disability monies or pension monies.

22 MS. PARKER: I will stipulate to that, too, judge. I  
23 don't think that's a disputed issue.

24 MR. JACOBS: I didn't know it would be a stipulation.  
25 That's why I'm asking the witness, your Honor. But I guess we

1 can do it in the form of the stipulation. I don't have a problem  
2 with that.

3 THE COURT: You can ask the question.

4 MR. JACOBS: Thank you.

5 BY MR. JACOBS:

6 Q. Ma'am, is there a distinction?

7 A. None that I'm aware of.

8 Q. Exhibit 27, that was the one that showed income coming in  
9 from different sources. It showed GW & SW and also income coming  
10 in from, I think it was the mental health place. Was that the  
11 form -- do you have that in front of you, ma'am?

12 A. Yes.

13 Q. That particular form does not note monies deducted from the  
14 gross income sent in to either the government or the Social  
15 Security -- Social Security monies, is that correct? It just  
16 shows gross income.

17 A. Could you -- could you repeat that? I don't know if I  
18 understood what you were saying.

19 Q. All right. That's probably the way I'm asking the  
20 question.

21 Ma'am, a lot of paychecks have a pay stub that notes  
22 what your gross income is, how much goes out for Social Security,  
23 how much goes out for state withholdings, how much goes out for  
24 federal withholdings. That form doesn't make that distinction,  
25 does it?



1 A. No.

2 Q. So you can't tell from that form whether monies were  
3 withdrawn and paid out to the different agencies or different  
4 branches of government.

5 A. No.

6 MR. JACOBS: Nothing further, your Honor.

7 THE COURT: Mr. Piazza, any questions of the witness?

8 MR. PIAZZA: Just a couple, your Honor.

9 CROSS-EXAMINATION

10 BY MR. PIAZZA:

11 Q. Good morning, ma'am.

12 A. Good morning.

13 Q. In the literature that's provided to a railroad employee  
14 that goes on disability, they have to report wages, work, whether  
15 paid or not, is that correct?

16 A. Yes.

17 Q. So if somebody did some work pro bono, for free, helping  
18 out, they would have to report that to the railroad board, is  
19 that correct?

20 A. Yes.

21 Q. So by not getting paid, it doesn't matter. They would still  
22 have to report to the railroad board.

23 A. That's correct.

24 Q. And that's sent out in the retirement notices and everything  
25 else, is that correct?

1 A. Yes, yes.

2 Q. In addition to that, they have to report any income that a  
3 family member collects, is that correct?

4 A. Yes.

5 Q. All right. And if a person is a corporate officer, whether  
6 paid or not, or doing any type of work for a corporation, whether  
7 it's family-owned, spouse-owned or -- in part, or a close friend,  
8 that the railroad employee is required to report that.

9 A. Yes.

10 Q. There is no obligation whatsoever by the corporation,  
11 correct, to make any type of reporting? That's correct?

12 A. Yes.

13 Q. Okay. No obligation by any manager, head of a business or  
14 anything else to report any income given to a railroad employee.  
15 It's up to the employee to -- up to the railroad employee to tell  
16 you, correct? Let me rephrase that.

17 A. You --

18 Q. Yeah, the obligation under all these notices is to the  
19 person on disability or pension to report it.

20 A. I just want to make sure that this is clarified. If we send  
21 out a notice and sometimes, we do.

22 Q. Okay.

23 A. If we obtain the information from the fact that an applicant  
24 or an annuitant that is receiving benefits is working for an  
25 employer, and we have the name and address for that employer, we

1 will send a notice to that employer --

2 Q. Okay.

3 A. -- and request those earnings from that employer.

4 Q. Oh, yes.

5 A. And we are obligated to do that.

6 Q. Yeah, after the fact. If --

7 A. Okay, okay, yes,

8 Q. But generally speaking, you know, if somebody is on  
9 disability and goes out and gets a job, doesn't tell his  
10 employer, it's up to the railroad employee to come in and tell  
11 you.

12 A. Yes.

13 Q. Okay. You can -- in reviewing your file itself, you did not  
14 sit down with Robert Pochmara yourself, if you can remember.

15 A. No. I might have still been in high school.

16 Q. Oh, okay. And even if somebody is on disability, they could  
17 earn a limited amount of monies anyways, up to a certain amount,  
18 per month, is that correct?

19 A. Yes.

20 Q. All right.

21 MR. PIAZZA: May I have a brief moment, your Honor?

22 (Whereupon defense counsel confer off the record)

23 MR. PIAZZA: Nothing further, your Honor.

24 THE COURT: Any redirect for the government?

25 REDIRECT EXAMINATION

1 BY MS. PARKER:

2 Q. Miss Smith, if there are any earnings or any work, it has to  
3 be reported, right?

4 A. Yes.

5 Q. Even if it's below the threshold.

6 A. Yes.

7 Q. And you said that if you have information from any source  
8 indicating that a person who is on railroad disability is  
9 actually working, and you have information regarding who that  
10 person is working for, you can inquire of that person.

11 A. Yes.

12 Q. And would you expect to get a truthful response regarding  
13 someone working there or not?

14 A. Yes.

15 MS. PARKER: Nothing further, your Honor. Thank you.

16 THE COURT: Any concluding recross?

17 MR. JACOBS: No, sir.

18 MR. PIAZZA: No, your Honor.

19 THE COURT: Thank you very much, ma'am.

20 (At 11:30 a.m. - witness excused)

21 THE COURT: Government's next witness, please.

22 MS. POP: The government calls Elias Taratuta.

23 THE COURT: Good morning.

24 THE WITNESS: Good morning.

25 THE COURT: If you could raise your right hand.

1 Do you solemnly swear that the testimony you are about  
2 to provide will be the truth, the whole truth and nothing but the  
3 truth so help you God?

4 THE WITNESS: I do.

5 THE COURT: Please have a seat over in the witness stand  
6 to your far left.

7 ELIAS TARATUTA

8 Having first been duly sworn at 11:30 a.m., testified as follows:

9 DIRECT EXAMINATION

10 BY MS. POP:

11 Q. Good morning. Could you please introduce yourself and spell  
12 your name for the record?

13 A. I'm Elias Taratuta. That's E-L-I-A-S, T-A-R-A-T-U-T-A.

14 Q. And what is your occupation?

15 A. I'm a builder by trade and then in the wintertime for three  
16 months, I prepare income taxes.

17 Q. And where do you work when you do these tax preparations?

18 A. My office in my house.

19 Q. Where is that located?

20 A. It's 7905 441 Road, Hawks, Michigan.

21 Q. And how far is that from Rogers City?

22 A. About ten, ten and a half miles.

23 Q. So how far did you go to school?

24 A. Pardon?

25 Q. How far did you go to school?

1 A. Twelfth grade.

2 Q. And did you get any kind of training to prepare taxes?

3 A. No.

4 Q. How did you learn how to do that?

5 A. Well, I get the professional guide every year.

6 Q. So did you self-train yourself?

7 A. Yes, yes.

8 Q. And what kind of areas do you work for, like --

9 A. What area?

10 Q. Yeah.

11 A. Northeastern lower Michigan. Primarily Presque Isle County,  
12 Alpena County, Montmorency County. Basically those three  
13 counties.

14 Q. And how long have you been doing this for, tax preparation?

15 A. Forty-eight years.

16 Q. Forty-eight years. And approximately how many returns do  
17 you prepare every year?

18 A. Right about three hundred.

19 Q. What kind of tax returns do you prepare?

20 A. Individual, some business, a few businesses, less than 25,  
21 and then a few farms, probably half a dozen farm returns.

22 Q. Okay. And do you know Robert and Maxine Pochmara?

23 A. Yes, I do.

24 Q. How do you know them?

25 A. Well, I've known them for probably 25 years or longer. I

1 used to do Robert's parents income taxes and they live in the  
2 general area so everybody knows everybody there.

3 Q. And have you prepared tax returns for Maxine and Robert  
4 Pochmara?

5 A. Yes, I did.

6 Q. Both federal and state?

7 A. Yes.

8 Q. And how long have you been doing this for?

9 A. For them?

10 Q. Yes.

11 A. Probably 25 years.

12 Q. I will hand you some exhibits, Government's Exhibits 127  
13 through 136 and 146 through 156.

14 MS. POP: May I approach, your Honor?

15 THE COURT: You may.

16 BY MS. POP:

17 Q. Let's take a look at the first document, Exhibits 127  
18 through 136. Do you recognize those?

19 A. Yes.

20 Q. And what are they?

21 A. Those are federal income tax returns for Maxine Pochmara and  
22 I also see there is Michigan income tax returns for the same  
23 individual.

24 Q. What years are they for?

25 A. Pardon?

1 Q. What years are they for?

2 A. This is 2005, 2006, all the way to 2007, 2008, and 2009.

3 Q. And how do you recognize them?

4 A. Well, I would have -- by the signature on them.

5 Q. Did you prepare those tax returns?

6 A. Yes, I did.

7 Q. Could you speak closer to the microphone, please.

8 A. Okay.

9 Q. Did you prepare those tax returns?

10 A. Yes, I did.

11 Q. Is it a fair and accurate depiction of the state and federal  
12 tax returns that you prepared for Maxine Pochmara from 2005  
13 through 2009?

14 A. Correct.

15 MS. POP: Your Honor, the government moves to admit  
16 those exhibits into evidence.

17 THE COURT: Any opposition?

18 MR. JACOBS: No objection, your Honor.

19 MR. PIAZZA: No comment.

20 THE COURT: Received.

21 BY MS. POP:

22 Q. Now, if you could take a look at the other stack of  
23 exhibits, 146 through 156. Do you recognize those exhibits?

24 A. Yes.

25 Q. What are they?



1 A. Federal and Michigan income tax returns for Robert J.  
2 Pochmara.

3 Q. And what years are they for?

4 A. This one starts at 2004 and all the way to 2009.

5 Q. And did you prepare those tax returns?

6 A. Yes, I did.

7 Q. Did you sign them?

8 A. Yes, I did.

9 Q. And are they a fair and accurate depiction of the state and  
10 federal tax returns you prepared for Robert Pochmara from 2004 to  
11 2009?

12 A. Yes.

13 MS. POP: The government moves to admit into evidence  
14 these exhibits, your Honor.

15 MR. JACOBS: Repeat the exhibit numbers, please.

16 MS. POP: They are 146 to 156.

17 THE COURT: Any objections, gentlemen?

18 MR. JACOBS: I have none, your Honor.

19 MR. PIAZZA: No, your Honor.

20 THE COURT: They are received.

21 BY MS. POP:

22 Q. And do you have records older than 2005 when it comes to  
23 their tax returns?

24 A. Yes, I do. Some would be electronic. The more previous  
25 ones are electronically stored.

1 Q. And do you keep all of their tax returns --

2 A. I don't for the paper ones.

3 Q. -- for the last 25 years?

4 A. Not the paper ones, no.

5 Q. Some of them have been destroyed due to their age?

6 A. Pardon?

7 Q. Some of them have been destroyed?

8 A. Yes, I shred them.

9 Q. And if you can take a look at those exhibits on the front  
10 page, can you tell us how they listed themselves when it comes to  
11 their filing status?

12 A. They filed single.

13 Q. Let's take a look at Exhibit 127, if we can pull that out.

14 A. One twenty-seven?

15 Q. Yes. And if you can show us where the filing status line  
16 is?

17 A. Filing status line is 6A.

18 Q. And that reads?

19 A. Single.

20 Q. Single.

21 A. It says yourself. Filing status is Line 1, which is single,  
22 yeah.

23 Q. Okay. And what is the address listed on the tax return?

24 A. What is the address?

25 Q. Yes.

1 A. 1537 Klee Road, Rogers City, Michigan, 49779.

2 Q. Okay. And if we can take a look at Exhibit 146.

3 A. Yes.

4 Q. What is -- one second. We will pull that up. What's the  
5 name on this tax return?

6 A. Pardon?

7 Q. What is the name on the tax return?

8 A. Robert J. Pochmara.

9 Q. And what is the status listed there?

10 A. Filing status is single.

11 Q. And what is the address?

12 A. The address is 1537 Klee Road, Rogers City, Michigan, 49779.

13 Q. Do you know Gary Wilson?

14 A. Yes, I do.

15 Q. Do you see him in the courtroom today?

16 A. Yes, I do.

17 Q. Can you point him out and describe where he is sitting and  
18 what he's wearing?

19 A. He is sitting right on the left of that table with a blue  
20 shirt.

21 MS. POP: Your Honor, may the record reflect the witness  
22 has identified the defendant Gary Wilson?

23 THE COURT: The witness has identified the defendant.

24 BY MS. POP:

25 Q. How long have you known Gary Wilson for?

1 A. Since I've been going to the NAPA Auto Parts Store, which is  
2 probably 15 years.

3 Q. And how do you know him?

4 A. By going to the store. Yes.

5 Q. Did you see him at the store?

6 A. Yes.

7 Q. And do you know Sue Wilson?

8 A. I do not know Sue Wilson.

9 Q. And how long have you been going to the NAPA Auto Parts  
10 Store?

11 A. At least 15 years.

12 Q. And when you went to the NAPA Auto Parts Store and Mr. Gary  
13 Wilson was there, what was he doing there?

14 A. He was manning the counter.

15 Q. Would he wait on you?

16 A. Yes, he would.

17 Q. And how often would he be there at the NAPA Auto Parts  
18 Store?

19 A. Sometimes only once or twice a year. Maximum, would be four  
20 times, but --

21 Q. And every time you went there, you saw Gary Wilson there as  
22 well?

23 A. Pretty well, yes.

24 Q. And have you also seen Robert Pochmara in the store when you  
25 went there?

1 A. Yes, I have.

2 Q. How often did you see Robert Pochmara there?

3 A. He was there about every time that I was at the store.

4 Q. And for how long have you seen Robert Pochmara at the NAPA  
5 Auto Parts Store?

6 A. Probably for a span of about ten years.

7 Q. And what would Mr. Pochmara do there at the NAPA Auto Parts  
8 Store?

9 A. He would man the counter, also.

10 Q. And would he wait on you?

11 A. Yes, he would.

12 Q. And if you needed any parts, he would be helping you with  
13 that?

14 A. Yes. He would look it up on the computer, on the screen,  
15 and would go in the back room and get the parts.

16 Q. Okay. And have you ever seen Maxine Pochmara working at the  
17 NAPA Auto Parts Store?

18 A. Never.

19 Q. Now, when you prepared the tax returns that I just showed  
20 you, was that based on information that Maxine and Robert  
21 Pochmara provided to you?

22 A. Yes.

23 Q. And what kind of information did Maxine Pochmara provide to  
24 you to prepare those taxes?

25 A. Maxine provided W-2 forms.

1 Q. How many every year?

2 A. Two.

3 Q. And where were they from?

4 A. One was from Northeastern Michigan Health and the other one  
5 was from GW SW Auto Parts or whatever, yeah.

6 Q. How about Mr. Robert Pochmara? What did he provide to you  
7 so you could prepare his tax returns?

8 A. He had a railroad retirement so he was a 1099-R.

9 Q. And did he ever give you any kind of W-2s for work performed  
10 the years 1998 to 2009?

11 A. No.

12 Q. Did Maxine Pochmara ever give you a 1099?

13 A. No.

14 Q. And are you familiar with 1099s and W-2s?

15 A. Yes.

16 Q. And what is your understanding of the difference between  
17 W-2s and 1099s?

18 A. Well, if an individual works for a company or another  
19 individual, they are required to give you a W-2 form. A 1099  
20 form is issued to self-employed people that offer work or  
21 services for others and if it's in excess of \$600 for that year,  
22 they are obligated to give you a 1099 form.

23 Q. And have you filed some of these tax returns for them  
24 electronically?

25 A. Yes.

1 Q. How recent have you been requested or required to do so?

2 A. I would say about five years ago.

3 Q. Now, let's take a look at Exhibit No. 127.

4 A. Yes.

5 Q. And let's turn to Page 2 of that. Well, first of all, could  
6 you tell us what 127 is?

7 A. It's the federal income tax return for 2005.

8 Q. For whom?

9 A. For Maxine C. Pochmara.

10 Q. Okay. And if you can turn to the second page?

11 A. Yes.

12 Q. At the bottom of the page --

13 A. Yes.

14 Q. -- is that your signature there?

15 A. Yes, it is.

16 Q. And above that, there is a place where Maxine Pochmara  
17 should have signed but there is no signature there.

18 A. The copy that's mailed in copies, I always make them sign  
19 those copies.

20 Q. Okay.

21 A. But electronically, then they sign an E file authorization  
22 form that gives me the authority to use their last five digits of  
23 their Social Security number as their electronic signature.

24 Q. So when you prepare these tax returns for Maxine Pochmara,  
25 you would ask Maxine to verify all of that information that you

1 filled in?

2 A. Yes.

3 Q. And then you would have her sign the form that you returned  
4 or mailed to the IRS?

5 A. Yes.

6 Q. And when you prepared them and filed them electronically,  
7 you would still have them verify the accuracy of the information  
8 that's contained in them?

9 A. Yes.

10 Q. And she would sign an E file certification certifying that  
11 was the truth in allowing you to file that?

12 A. Yes, yes.

13 Q. Now, let's take a look -- and would you do the same thing  
14 for Robert Pochmara?

15 A. Yes, I would.

16 Q. Let's take a look at Exhibit 128. And let's go all the way  
17 to the Schedule W, the Michigan tax return, 2005, withholding tax  
18 schedule.

19 A. Yes.

20 Q. Now, towards the center of that page, there is a table,  
21 Table 1. Could you tell us what that is?

22 A. That is where they had Michigan taxes withheld from W-2  
23 forms.

24 Q. And what is listed in that box?

25 A. Northeast Michigan Community Mental Health and GW & SW,



1 Incorporated.

2 Q. Now, if you go into the first column there in Table 1, there  
3 is a box X'd.

4 A. Yes.

5 Q. What is that indicating?

6 A. That indicates whose W-2 is it. Is it for an individual or  
7 for a spouse. In this case, it's -- it's for her because it's a  
8 single return.

9 Q. And she -- and that box is marked for both jobs --

10 A. Yes.

11 Q. -- both the Northeast Michigan Community Mental Health and  
12 GW & SW.

13 A. Yes.

14 Q. And then you have the income reported on that W-2 from both  
15 locations, is that right?

16 A. Yes.

17 Q. And what was the income from each one? What was the income  
18 from each one?

19 A. Yes.

20 Q. Can you read it, please? Can you read what the income was  
21 from each company.

22 A. Now, which --

23 Q. On Table 1.

24 A. Northeast Michigan Community Mental Health was \$19,168.

25 GW & SW, Incorporated was \$31,720.

1 Q. And that was back in 2005, correct?

2 A. Right.

3 Q. And that information -- where did that information come  
4 from?

5 A. Directly from the W-2 forms.

6 Q. And that was provided to you by Maxine, correct?

7 A. Yes.

8 Q. Okay. Let's take a look at Exhibit 130. And let's move on  
9 to the same W schedule and the Table 1.

10 A. Yes.

11 Q. Is this the 2006?

12 A. It's 2006, yes.

13 Q. Okay. And what is listed in that box?

14 A. Northeast Michigan Community Mental Health, wages were  
15 \$20,514 and Michigan tax withheld was \$800. And GW & SW,  
16 Incorporated, the wages were \$33,220 and Michigan tax withheld  
17 was \$2,070.

18 Q. And again, this information came from W-2s provided by her  
19 to you?

20 A. Yes.

21 Q. And she verified the accuracy of this information?

22 A. Yes.

23 Q. Let's move on to Exhibit 132. And go to the same Schedule W  
24 in Table 1.

25 A. Did you say 133?

1 Q. One thirty-two.

2 A. One thirty-two, okay.

3 Q. What's listed in that table? What's listed in that table  
4 there?

5 A. Northeast Michigan Community Mental Health for \$19,261 in  
6 wages, \$761 withheld for Michigan tax. GW & SW, Incorporated,  
7 \$34,980 in wages and \$2,947 held in Michigan tax.

8 Q. And this is the 2007 Michigan withholding tax schedule, is  
9 that what it is?

10 A. Yes.

11 Q. And this is from W-2s provided to you by her, correct?

12 A. Correct.

13 Q. Now, if we go to Exhibit 131, and we look at her reported  
14 earnings, can you tell me what that total amount was?

15 A. Now, you're talking about the federal schedule?

16 Q. Yes.

17 A. The total wages on Line 7 were \$56,394.

18 Q. And this is her federal tax return in 2007, right?

19 A. Yes.

20 Q. And would that amount -- what is that amount -- where is  
21 that coming from?

22 A. It's coming from the W-2 forms.

23 Q. So if you add the two W-2 incomes together, then we get this  
24 number, \$56,394?

25 A. Yes, yes.

1 Q. Okay. Let's move on to Exhibit 134. And if we can again,  
2 look at Table 1 in the Michigan withholding tax schedule.

3 A. Yes.

4 Q. And what year is that for?

5 A. This is for 2008.

6 Q. Okay. And what is listed there?

7 A. We show income from Northeast Michigan Community Mental  
8 Health for \$22,899 and \$996 withheld for income tax, Michigan  
9 tax. GW & SW, Incorporated, income of \$34,370 and Michigan tax  
10 withheld, \$3,153.

11 Q. Okay. And if you take a look at Exhibit 133, Line 7. What  
12 is that document?

13 A. This is a federal income tax return for 2008.

14 Q. For Maxine Pochmara?

15 A. Pardon?

16 Q. For Maxine Pochmara?

17 A. Yes.

18 Q. And on Line 7, what is that number?

19 A. That is the total of all of the income off the W-2 forms  
20 which is \$57,269.

21 Q. So the numbers we just saw on Table 1, if you add those  
22 together, they would come to this amount?

23 A. I'm sure. That's correct.

24 Q. Okay, let's move on to Exhibit 136. And if we move on to  
25 the Michigan withholding tax schedule, on Table 1, can you tell

1 me what year that is for?

2 A. This is for year 2009.

3 Q. Okay. And what do we have there in Table 1?

4 A. We have income from Northeast Michigan Community Mental  
5 Health for \$23,145 and Michigan income tax withheld, \$1,007. We  
6 also have income from GW & SW, Incorporated, in the amount of  
7 \$5,526 and Michigan income tax withheld of \$497.

8 Q. And if you take a look at Exhibit 135, you can tell us what  
9 that is.

10 A. That is a 2009 federal income tax schedule, 1040.

11 Q. And if you go to Line 7.

12 A. Line 7 indicates income from W-2 forms in the amount of  
13 \$28,671.

14 Q. And again, you arrived at that number by adding the amounts  
15 on the two W-2s, is that right?

16 A. Yes.

17 Q. Okay. Did Maxine Pochmara ever claim any kind of dividends  
18 or stock or investment return income?

19 A. I didn't understand the question.

20 Q. Did Maxine Pochmara ever give you any kind of forms claiming  
21 any kind of dividend, stock or investment return income?

22 A. Nothing that amounted to much, maybe a few dollars in  
23 savings interest and that's about it.

24 Q. And was that coming from her savings accounts?

25 A. I'm not sure. It's just a form they get from their credit

1 union.

2 Q. I see. I see that Maxine Pochmara, if we take a look at  
3 Schedule A, let's say, on Exhibit 127, she is also listing her  
4 real estate taxes, mortgage interest, and things of that nature,  
5 is that right?

6 A. Yes.

7 Q. And did Robert Pochmara have one like that? Did he claim  
8 any real estate taxes or mortgage interest?

9 A. He did not.

10 Q. Did he only have the standard deductions?

11 A. I just took the standard deduction.

12 Q. Now, let's take a look at Exhibit 135.

13 A. Okay.

14 Q. Can you tell us what you're looking at? What is that?

15 A. This is federal income tax return for the year 2009.

16 Q. For whom?

17 A. Pardon?

18 Q. For whom?

19 A. This is for Maxine C. Pochmara.

20 Q. And let's take a look at Line 13.

21 A. Yes.

22 Q. Can you tell me what's listed in that line?

23 A. That is a capital gains that she reported on the sale of her  
24 share of the auto parts store.

25 Q. And what is the capital gain?

1 A. It was \$20,000.

2 Q. And let's look through this exhibit, all the way to Schedule

3 D.

4 A. Yes.

5 Q. And Part 2, Paragraph 8.

6 A. Yes. It says NAPA Auto Parts.

7 Q. Can you -- Schedule D, Part 2.

8 A. Part C, 3/24 of '09.

9 Q. One second, so we can pull this up. It's 135. And if we go  
10 to Part 2, Paragraph 8. Okay. So we have an explanation there  
11 for this capital gain. Can you tell us what that is?

12 A. That's the auto parts store, that she sold her portion of  
13 it.

14 Q. And can you tell us the details about that transaction that  
15 are reported there?

16 A. Well, she acquired it the 5th of January, 1999, and date  
17 sold was 3/24 of '09. Sale price was \$90,000. Cost or other  
18 basis was \$70,000. So the capital gain was twenty thousand.

19 Q. So does that mean she purchased that for \$70,000 and sold it  
20 for \$90,000?

21 A. Yes.

22 Q. And made a profit of \$20,000.

23 A. Correct.

24 Q. Okay. And if we look to Form 2106, it looks like she also  
25 reported some vehicle expenses. Do you know what those were

1 about?

2 A. That would be her expenses in the in-home health care. I  
3 believe she went to visit clients at their homes.

4 Q. So she was claiming mileage --

5 A. Yes.

6 Q. -- for visiting patients?

7 A. Yes.

8 Q. Let's go back to NAPA. When you would go there and Robert  
9 Pochmara would wait on you and you would purchase parts from  
10 there --

11 A. Yes.

12 Q. -- would he also take the money for those parts from you  
13 and --

14 A. Yes, he would. Yes.

15 Q. Okay.

16 MS. POP: Thank you. No further questions.

17 THE COURT: Cross-examination?

18 MR. PIAZZA: Just a brief moment, your Honor.

19 (Whereupon defense counsel confer off the record)

20 CROSS-EXAMINATION

21 BY MR. JACOBS:

22 Q. Sir, I'm Steve Jacobs. I represent Gary Wilson. I think --  
23 well, let's just clarify. In the 1990s, all of -- or say around  
24 the early 2000s, how often would you go to the NAPA store?

25 A. Twice a year, maximum four times a year.



1 Q. Okay. Twice to four times a year. Now, if I understand  
2 correctly, you're a farmer who does -- also does taxes.

3 A. Yes.

4 Q. And you've got a twelfth grade education. Did you take any  
5 sort of classes through H & R Block or anything like that, to --  
6 to get some expertise in doing taxes?

7 A. No. Each year, I purchase a professional income tax guide  
8 from JK Lasser, and the guide costs about eighty -- eighty to  
9 ninety dollars. It's a thick book about three inches thick and  
10 it's got all the tax laws and the changes each year.

11 Q. Is that -- do you also order a program, like Turbo Tax or  
12 something like that --

13 A. Yes, I do.

14 Q. -- to help you do the returns?

15 A. Yes. I have a program from Intuit.

16 Q. Intuit.

17 A. Yes.

18 Q. Quickbooks.

19 A. Mm-hmm.

20 Q. All right. You use Quickbooks programs to do the taxes.

21 And other than being self-taught, reading this booklet and using  
22 Quickbooks, that's the extent of your further education regarding  
23 taxes, is that correct?

24 A. That's correct.

25 Q. All right. Do you also do things like incorporate

1 businesses for people and get those corporation books and do the  
2 articles of incorporation --

3 A. No.

4 Q. -- and minutes and things like that?

5 A. No.

6 Q. So you don't do that.

7 A. I do not.

8 Q. But in the tax field, though -- because you said you had a  
9 few -- a couple businesses?

10 A. Yeah, small businesses. Very small individually-owned  
11 businesses.

12 Q. All right. Well, with those individually-owned businesses,  
13 would you do the 940s and 941 forms, if you're familiar with  
14 those?

15 A. Most of them don't have employees.

16 Q. All right. So, yes, you're familiar with those forms.

17 A. Oh, yes, yes.

18 Q. Those forms have to do with employees.

19 A. Yes.

20 Q. And so that's -- quit laughing, Mrs. Parker. And so you  
21 don't particularly use those forms --

22 A. No.

23 Q. -- is that what you're saying?

24 A. No.

25 Q. Okay. All right. When we look at the forms that you did

1 fill out for Robert and Maxine Pochmara, it appears to me on  
2 Maxine's, that you listed her as a laborer, is that correct?

3 A. Well, that's -- she is a laborer for Northeast Michigan  
4 Health.

5 Q. All right. Did you come up with the word laborer, or did  
6 she, if you recall?

7 A. Somebody that provides work for another individual or a  
8 company.

9 Q. Okay. Who came up with that word? Did she say I'm a  
10 laborer versus a secretary, versus clerical, or did you come up  
11 with the word laborer?

12 A. No. I just asked, what's your job or occupation, and she  
13 said laborer or whatever.

14 Q. And same thing with Robert Pochmara, you have down there  
15 retired.

16 A. Yes.

17 Q. How did you come up with that?

18 A. He has a retirement form. That's the only thing he had  
19 so --

20 Q. Did you actually talk to him about it, are you retired?

21 A. Yes. He said he's on disability, he is retired.

22 Q. He is on disability, he is retired.

23 A. Yes.

24 Q. There is no difference between receiving disability and  
25 being retired?

1 MS. PARKER: Objection. Beyond the scope of direct and  
2 expertise.

3 THE COURT: May and may not. I will overrule it and  
4 take the gentleman's response.

5 BY MR. JACOBS:

6 Q. If you know, sir, is there a difference between being on a  
7 pension and being retired?

8 A. You still get a 1099 form either way.

9 Q. So what's your answer, that there is no difference or there  
10 is a difference? Or you don't know?

11 A. I don't know.

12 Q. Fair.

13 A. Okay.

14 Q. But it is fair, and you correctly pointed out, you still get  
15 a 1099 form if you're on retirement or if you're on disability,  
16 is that correct?

17 A. Correct.

18 Q. And in fact, that's attached to one of your -- one of the  
19 tax returns you did, I think it's tax return No. 146. And it has  
20 a copy of a 1099 that Mr. Pochmara received and it notes -- it  
21 just notes it's from the United States railroad retirement  
22 people, but doesn't make a distinction between pension or  
23 disability.

24 A. Any time you see a R behind a 1099, that's retirement.

25 Q. All right. So R is retirement.

1 A. Yes.

2 Q. Okay. And that's your understanding. On these 1040 forms  
3 for an individual who is working for an employer and Social  
4 Security monies are taken out, FICA, F-I-C-A --

5 A. Yes.

6 Q. -- is that noted on the actual tax return, how much Social  
7 Security monies are taken out?

8 A. It's noted on the W-2 form and that -- Social Security  
9 wouldn't show up on the federal form. Now, Michigan, it would be  
10 just a withholding tax. Actually, Social Security would not --  
11 withholding wouldn't show up.

12 Q. Right. So -- so on those 1040s, first, we will talk the  
13 1040 federal form.

14 A. Right.

15 Q. If Social Security monies were taken out by the employer,  
16 that's not noted on the form. You have to actually look at the  
17 W-2.

18 A. No.

19 Q. Is that correct?

20 A. It's not noted on the 1040 form.

21 Q. Right. And with the State of Michigan's 1040 form, if  
22 Social Security monies are taken out, that's also not noted and  
23 you pointed out, they do note Michigan withholding on there.

24 A. Right.

25 Q. But it doesn't denote Social Security withholdings, is that

1 correct?

2 A. Right.

3 Q. Are you saying you also did the taxes for the Pochmaras  
4 before 2005 and you just don't have the returns?

5 A. I don't have any of those old ones anymore.

6 Q. But I'm asking you, do you recall if you did their returns  
7 prior to 2005?

8 A. Oh, yes.

9 Q. Oh, yes? And do you recall how many years prior to that  
10 that you did their returns?

11 A. Maybe 25 years total.

12 Q. Okay. Might have missed a year or two or --

13 A. I may have but I didn't notice it though, because I do three  
14 hundred plus returns, so --

15 Q. Sure. Did they -- did they live together? I think it's  
16 noted on the returns, Robert and Maxine Pochmara lived together.

17 A. Yes.

18 Q. And you noted on each one of those returns, that they were  
19 single, is that correct?

20 A. Yes.

21 Q. If you know, did they hold themselves out as being single to  
22 other people?

23 A. They were divorced many years ago so --

24 Q. They were divorced many years ago?

25 A. Yes. They continued to live with each other, yeah.

1 Q. And continued to live with each other.

2 A. Right.

3 Q. And you knew that because you did their taxes.

4 A. Right.

5 Q. All right.

6 MR. JACOBS: Nothing further, your Honor.

7 THE COURT: Mr. Piazza, any questions for the gentleman?

8 MR. PIAZZA: Just a quick question, sir.

9 CROSS-EXAMINATION

10 BY MR. PIAZZA:

11 Q. You indicated you learned through the book and the computer  
12 program. You're not a CPA, are you?

13 A. I am not.

14 MR. PIAZZA: Nothing further.

15 THE COURT: Any redirect, ma'am?

16 MS. POP: No, your Honor.

17 THE COURT: Thank you very much, sir.

18 (At 12:07 p.m. - witness excused)

19 THE COURT: Government's next witness, your Honor.

20 MS. PARKER: Al Pines, your Honor.

21 THE COURT: Good afternoon.

22 THE WITNESS: Good afternoon.

23 THE COURT: Please raise your right hand.

24 Do you solemnly swear that the testimony you are about  
25 to provide will be the truth, the whole truth and nothing but the

1 truth so help you God?

2 THE WITNESS: I do.

3 THE COURT: If you could have a seat on the witness  
4 stand over to your far left.

5 THE WITNESS: Okay. Thank you.

6 ALAN PINES

7 Having first been duly sworn at 12:08 p.m., testified as follows:

8 DIRECT EXAMINATION

9 BY MS. PARKER:

10 Q. Hi, there. Would you state your name and spell it for us,  
11 please?

12 A. Alan Pines, A-L-A-N, P-I-N-E-S.

13 Q. And what community do you live in?

14 A. Rogers City, Michigan.

15 Q. And in that capacity -- well, let me -- where do you work?

16 A. I work at the Calcite Quarry, in Rogers City.

17 Q. Can you keep your voice up there just a little bit?

18 A. Oh, I'm sorry. Calcite Quarry in Rogers City.

19 Q. Thank you. And what type of work do you do for the Calcite  
20 Quarry in Rogers City?

21 A. Currently, I'm the quarry manager and the manager of all the  
22 mobile equipment.

23 Q. And in connection with your work regarding the equipment, do  
24 you have occasion to buy parts for your equipment?

25 A. Yes, I do.



1 Q. How many parts stores are there in Rogers City?

2 A. Two.

3 Q. How big of a town is it?

4 A. It's a community of approximately three thousand people.

5 Q. And you said there are two parts stores. What are those two  
6 parts stores?

7 A. The NAPA Store and Bob's Auto Parts.

8 Q. And who, in your experience, has been involved with working  
9 at the NAPA Auto Parts Store?

10 A. I'm sorry. I didn't hear what you asked, please.

11 Q. You -- let me put it this way. Do you do business with the  
12 NAPA Store in getting parts for the equipment that you keep  
13 working for the quarry?

14 A. Currently, no, but we have in the past.

15 Q. All right. And when was -- what time frame were you doing  
16 business with the NAPA Store?

17 A. The main amount was in 2004 and 2005.

18 Q. During that time frame, who were the people who were running  
19 the store?

20 A. The people I had dealings with were Gary Wilson, Bob  
21 Pochmara, and Justin -- I don't know his last name, I guess.

22 Q. Okay. Do you see Gary Wilson present in the courtroom  
23 today?

24 A. I do.

25 Q. Could you point to him and describe what he is wearing?

1 A. Mr. Wilson is right there with a suit and blue shirt and a  
2 blue tie, if that's sufficient.

3 MS. PARKER: Your Honor, may the record reflect that the  
4 witness has identified the defendant?

5 THE COURT: There are two gentlemen there with blue  
6 shirts.

7 THE WITNESS: Okay. Well --

8 MR. JACOBS: We have no objection to the identification,  
9 your Honor.

10 THE COURT: The witness is identified.

11 MS. PARKER: I was trying to figure that out from here.  
12 Couldn't tell for sure. Thank you.

13 BY MS. PARKER:

14 Q. In the course of your working with the NAPA Auto Parts  
15 Store, what kind of interaction would you have with them?

16 A. What would happen is, I would call or the mechanics would  
17 call on an as-needed basis and for the most part, they would  
18 deliver parts down to our maintenance shop at the plant.

19 Q. And when you would call the auto parts store, did you ever  
20 have Gary Wilson answer the phone?

21 A. Yes.

22 Q. Would he take orders?

23 A. Yes.

24 Q. How about Robert Pochmara, would he answer the phone?

25 A. Yes.

1 Q. Would he take orders?

2 A. Yes.

3 Q. And you said there was another person named Justin?

4 A. Yes.

5 Q. He would take the orders?

6 A. He would, also, yes.

7 Q. And then would those -- would the orders generally be  
8 delivered to you at the quarry or would you have to go to the  
9 store to get them?

10 A. Um, sometimes we would pick them up, rarely. Personally,  
11 I've only been in the store a few times. For the most part, it  
12 was delivered to the -- right to the maintenance shop by Mr.  
13 Pochmara.

14 Q. So he was the primary delivery person?

15 A. Correct.

16 Q. And if you ordered parts over the phone and Mr. Pochmara  
17 delivered them to you at the job site, how would payment be  
18 handled?

19 A. What they would do at that particular time is they would  
20 bring in a piece of paper and if I recall, I'm pretty sure it was  
21 green, I would sign it, they would keep one copy and I would take  
22 a copy over to the office for accounts payable.

23 Q. But you would give a copy back to Mr. Pochmara?

24 A. Yes.

25 Q. When he would make deliveries of the parts to the quarry,

1 what kind of vehicle would he use?

2 A. They had the little white truck with the yellow baseball cap  
3 that said NAPA.

4 Q. Do you know Maxine Pochmara?

5 A. I know who she is.

6 Q. All right. Did you ever encounter her at the NAPA Auto  
7 Parts Store?

8 A. No, I did not.

9 Q. Never -- did you ever have her answer the phone when you  
10 called to order parts?

11 A. No.

12 Q. And are you familiar with Klee Road?

13 A. Yes, I am.

14 Q. To your knowledge, did the Wilsons ever live on Klee Road?

15 A. Yes, they did.

16 Q. Can you say approximately what that cross street there would  
17 be?

18 A. Probably be a quarter to a half mile between there and M-68  
19 highway.

20 MS. PARKER: Pass the witness, your Honor. Thank you.

21 THE COURT: Cross? Any questions?

22 MR. JACOBS: No, sir.

23 THE COURT: Mr. Piazza?

24 MR. PIAZZA: Thank you, your Honor.

25 CROSS-EXAMINATION

1 BY MR. PIAZZA:

2 Q. Good afternoon, sir.

3 A. Good afternoon.

4 Q. You say you would order parts on occasion?

5 A. Yes.

6 Q. And on occasion, the truck would come out and a male would  
7 be driving the truck, is that correct?

8 A. I didn't quite hear you.

9 Q. Okay. Somebody would come out and deliver the parts.

10 A. Primarily Mr. Pochmara, yes.

11 Q. And occasionally, you would go to the store itself, is that  
12 correct?

13 A. I stated a couple times, yes.

14 Q. At no time, when you went to the store did you see Sue  
15 Wilson at the store?

16 A. No, I did not.

17 Q. You never saw Sue Wilson ever deliver parts to your  
18 establishment.

19 A. That's correct, I did not.

20 Q. And you had no dealings relating to the business itself of  
21 NAPA Auto Parts with Sue Wilson, is that correct?

22 A. That is correct.

23 MR. PIAZZA: Nothing further.

24 MS. PARKER: I have no redirect, your Honor.

25 THE COURT: Thank you, sir. You're excused.

1 (At 12:15 p.m. - witness excused)

2 THE COURT: Government's next witness, please.

3 MS. POP: The government calls Gerald Smigelski.

4 THE COURT: Good afternoon. If you could raise your  
5 right hand.

6 Do you solemnly swear that the testimony you are about  
7 to provide will be the truth, the whole truth and nothing but the  
8 truth so help you God?

9 THE WITNESS: Yes, I do.

10 THE COURT: Please have a seat in the witness stand.

11 GERALD SMIGELSKI

12 Having first been duly sworn at 12:16 p.m., testified as follows:

13 DIRECT EXAMINATION

14 BY MS. POP:

15 Q. Could you please state your name and spell it for the  
16 record?

17 A. My name is Gerald Smigelski, S-M-I-G-E-L-S-K-I.

18 Q. And where do you work?

19 A. I work for the Presque Isle County Road Commission.

20 Q. What do you do there?

21 A. My current position is superintendent manager.

22 Q. And where is this located?

23 A. Rogers City, Michigan.

24 Q. And how long have you been working for the road commission  
25 for?

1 A. I began in 1991 as the clerk.

2 Q. And how long have you been doing that for, before you became  
3 a manager?

4 A. I was the clerk until 2008 and then I assumed that position  
5 as superintendent manager.

6 Q. Could you explain to us what the road commission does?

7 A. Our main responsibility is to maintain the roads in a safe  
8 and reasonable manner for the traveling public within our county,  
9 on both the county road system and the state system.

10 Q. And do you use a variety of vehicles and machinery to do  
11 that?

12 A. Yes, we do.

13 Q. And what are your duties for the road commission?

14 A. As superintendent manager, I'm responsible for every aspect  
15 that we have there. I'm responsible for all our employees, all  
16 the purchases, anything that has to do with the road commission's  
17 function.

18 Q. And did you ever deal with the NAPA Auto Parts Store in  
19 Rogers City?

20 A. Personally?

21 Q. Personally, and as a part of your job if you did.

22 A. Personally, I've purchased items from there over the past  
23 several years. As an employee of the road commission, when I was  
24 clerk, it was my responsibility to pay the accounts payables.

25 And then as superintendent manager, I have spoken several times

1 with -- with them regarding things. Our shop foreman, our head  
2 mechanic, usually talks to me if he's going to purchase something  
3 large or if he's going to be purchasing any type of item that has  
4 to deal with having an inventory in our shop.

5 Q. And who would you communicate with at the NAPA Auto Parts  
6 Store?

7 A. When I was the clerk, typically, how the function went is  
8 our shop mechanic, our head foreman, would receive an invoice.  
9 He would pass it on to me after he put down what type of accounts  
10 or what type of equipment it was used on. I would pay that  
11 invoice. We got a monthly statement. If we didn't have a  
12 statement that matched up or invoice that matched up with the  
13 statement, I would call down to the auto parts store, asking them  
14 to fax over a copy of whatever invoice I was missing.

15 Q. And who would you be talking to?

16 A. It varied. I spoke with Bob or Gary or Justin, whoever  
17 answered the phone, and they would just fax it to me within a few  
18 minutes.

19 Q. And is Bob, Robert Pochmara?

20 A. Yes.

21 Q. And Gary, would that be Gary Wilson?

22 A. Yes.

23 Q. So you know Robert Pochmara then.

24 A. Yes.

25 Q. And would he also take orders and deliver parts at your



1 establishment?

2 A. That wasn't my position. I --

3 Q. And how long have you known Robert Pochmara for?

4 A. I would say that when I was the clerk, the only time I met  
5 him is if I would go into the shop to get the invoices, so  
6 whenever he started working. I really don't know.

7 Q. Approximately, you don't have any --

8 A. I started in 1991. I don't know what year W.W. Auto Parts  
9 started and when they started servicing our facility, that would  
10 have been my first experience with him.

11 Q. So were you under the impression that Robert Pochmara was  
12 working at the NAPA Store?

13 A. I did see him at both the store and at our facility, yes.

14 Q. And what would he be doing at the store?

15 A. The times that I've seen him was when I went in to get  
16 something personally, he was behind the counter helping  
17 customers.

18 Q. And did he help you?

19 A. I believe on occasions, yes.

20 Q. And did he cash the money you paid for the parts?

21 A. He put it in the register, yeah. He took my money, yes.

22 Q. And you said you also saw him at the road commission.

23 A. Correct, yes.

24 Q. What would he be doing there?

25 A. Usually, he would be talking with Steve, who is our head

1 mechanic.

2 Q. And when is the last time you saw him or heard of him  
3 working for NAPA?

4 A. I would say it was several years ago. Since then, Justin is  
5 now coming to our shop.

6 Q. And do you also know Gary Wilson?

7 A. I know who he is, yes.

8 Q. Do you see him in the courtroom today?

9 A. Yes, I do.

10 Q. Could you point him out and describe what he is wearing?

11 A. The gentleman right there with the blue -- blue shirt.

12 MS. POP: May the record reflect the witness has  
13 identified the defendant?

14 THE COURT: He has.

15 BY MS. POP:

16 Q. And is Mr. Gary Wilson associated with NAPA as well?

17 A. I believe so, yes.

18 Q. In what capacity?

19 A. I believe he is co-owner of the store.

20 Q. Now, when you would go to the store, would he also be  
21 present at the store?

22 A. Yes, he has been there at times, yes.

23 Q. And what would he be doing there?

24 A. Waiting on customers.

25 Q. And so how often would you say you would go to the store?

1 A. On a personal basis, I would say I may have been in there  
2 half a dozen times over the years. Not often.

3 Q. And you said you would be calling the store from time to  
4 time.

5 A. I have, yes. When we get our monthly statement, if it  
6 didn't match up with the actual invoices that I had, I would  
7 contact the store to get a copy of the invoice.

8 Q. And then Robert Pochmara or Gary Wilson would help you then,  
9 and then Justin as well?

10 A. Yes.

11 Q. Have you ever met Maxine Pochmara?

12 A. Yes.

13 Q. And did you ever see her at the NAPA Auto Parts Store?

14 A. No.

15 Q. Did she ever answer the phone when you called the NAPA Auto  
16 Parts Store?

17 A. No.

18 Q. And do you know where Robert and Maxine Pochmara live?

19 A. Yes.

20 Q. And where is that?

21 A. On Klee Road.

22 Q. Can you give us an intersection?

23 A. I would say it's approximately a mile south of the M-68  
24 intersection on the east side of the road.

25 MS. POP: No further questions, your Honor.

1 THE COURT: Cross-examination of this witness?

2 MR. JACOBS: Yes.

3 CROSS-EXAMINATION

4 BY MR. JACOBS:

5 Q. Sir, did you know if Robert Pochmara and Maxine Pochmara  
6 were married?

7 A. I believe they were, yes.

8 Q. They held themselves out as husband and wife, lived  
9 together?

10 A. That I do not know.

11 Q. You don't know if they lived together on Klee Road?

12 A. When I -- when I was at Klee Road to pick up an item I  
13 purchased from Bob, he was there alone.

14 Q. But you believed they were married.

15 A. Correct. They have the same last name.

16 MR. JACOBS: Nothing further, your Honor.

17 THE COURT: Mr. Piazza?

18 MR. PIAZZA: Thank you, your Honor.

19 CROSS-EXAMINATION

20 BY MR. PIAZZA:

21 Q. Good afternoon, sir.

22 A. Good afternoon.

23 Q. When you went to -- personally to NAPA Auto Stores, you  
24 didn't have any dealings with a person by the name of Sue Wilson,  
25 did you?

1 A. No, sir.

2 Q. You never saw somebody that was identified as Sue Wilson,  
3 did you?

4 A. No, sir.

5 Q. And when you would call over to NAPA, you never talked with  
6 anybody by the name of Sue Wilson, did you?

7 A. No, sir.

8 Q. And when you had parts delivered, you never saw somebody by  
9 the name of Sue Wilson delivering parts, did you?

10 A. No, sir.

11 MR. PIAZZA: Nothing further.

12 THE COURT: Are we at a completion?

13 MS. POP: Nothing on redirect, your Honor. No further  
14 questions for the witness.

15 THE COURT: Thank you, sir.

16 THE WITNESS: You're welcome.

17 (At 12:25 p.m. - witness excused)

18 MS. POP: We call Steve Peters.

19 THE COURT: Could I see counsel for just a moment?

20 (Whereupon sidebar conference held on the record as  
21 follows)

22 THE COURT: Are we done with customers?

23 MS. PARKER: No.

24 THE COURT: Why do we need more?

25 MS. PARKER: Because I think -- well, I'm sorry.

1 MS. POP: This one in particular will also mention that  
2 he also saw Sue Wilson there on one occasion.

3 THE COURT: So?

4 MS. POP: Working at the store as well.

5 MR. JACOBS: Okay.

6 MS. POP: Well, they are making a point that she is  
7 never there and she doesn't -- that she is going to be getting  
8 paid despite the fact that she is not in the store.

9 THE COURT: I don't see it as relevant.

10 MS. PARKER: Well, your Honor, they made an opening  
11 statement that she is never there.

12 MR. PIAZZA: Well, she did sign checks and did the  
13 bookkeeping.

14 THE COURT: Yeah.

15 MS. PARKER: Well, I think we should be entitled to  
16 present proofs that she is there.

17 THE COURT: At this point, from my point of view, it's  
18 cumulative with respect to all the other information,  
19 particularly when you consider the fact that they've already  
20 admitted it. You've admitted it.

21 MR. JACOBS: Yeah.

22 MS. POP: Well, in opening, they said that Robert  
23 Pochmara has been there often but he was not an employee there.

24 THE COURT: Robert.

25 MS. POP: Yes.

1 THE COURT: Well, we've already established, they've  
2 acknowledged that he worked there on equal terms to Gary Wilson.

3 MS. PARKER: Judge, are you going to tell Mr. Piazza  
4 that he cannot argue that Sue was never in the store?

5 THE COURT: Let's keep it really narrow, then, to just  
6 the one point, all right?

7 MS. POP: Okay.

8 THE COURT: Because it's getting cumulative.

9 MR. PIAZZA: Also, judge, I don't think we mentioned it  
10 before but at this time, I'm moving to sequester the witnesses.  
11 I've seen a couple people coming in and out. We never made the  
12 motion before but I'm making it now to have the witnesses  
13 sequestered.

14 MS. PARKER: They have been. That's why it's taking so  
15 long to get the witnesses in. He is -- that one is not our  
16 witness.

17 MR. PIAZZA: All right.

18 (Whereupon sidebar concluded)

19 THE COURT: Sir, could you raise your right hand?

20 Do you solemnly swear that the testimony you are about  
21 to provide will be the truth, the whole truth and nothing but the  
22 truth so help you God?

23 THE WITNESS: Yes, sir.

24 THE COURT: Please have a seat over in the witness  
25 stand.

1 STEVEN PETERS

2 Having first been duly sworn at 12:31 p.m., testified as follows:

3 DIRECT EXAMINATION

4 BY MS. POP:

5 Q. Could you please spell your name for the record?

6 A. S-T-E-V-E-N, P-E-T-E-R-S.

7 Q. And where do you work?

8 A. Presque Isle Road Commission, Rogers City.

9 Q. And what's your occupation there?

10 A. I am the head mechanic, shop foreman.

11 Q. And how long have you been doing this for?

12 A. 1991, March 11th.

13 Q. And can you tell us what you do there for the road  
14 commission?

15 A. I'm in charge of all the heavy maintenance, repairs at the  
16 Rogers City Road Commission, including truck repair, loaders,  
17 whatever we have, it is my duties.

18 Q. And have you ever dealt with the NAPA Auto Parts Store in  
19 Rogers City?

20 A. Yes, I have.

21 Q. What kind of dealings did you have with the store?

22 A. We have an inventory system with three suppliers there and  
23 once a week, NAPA or the other two suppliers come through and  
24 basically have an inventory system that they keep on hand for us.  
25 And then if I need anything extra, I either call there or if it's



1 just an inventory restock, I will order the part weekly and they  
2 will bring it the following week.

3 Q. So would you purchase parts from the store?

4 A. I purchased -- I purchased probably 75 percent of the parts  
5 and maintenance, yes. That's my job.

6 Q. And you said you've been doing that weekly?

7 A. Yes, I have -- I had NAPA set up weekly.

8 Q. Since when?

9 A. They haven't been there weekly for the last few years but  
10 probably around the mid-90s through 2000-something, I don't have  
11 the exact records, that we had a salesman come from NAPA to our  
12 facility.

13 Q. Okay. And have you ever seen Robert Pochmara working at  
14 NAPA?

15 A. Yes, I have.

16 Q. Would he wear an uniform?

17 A. Just a blue shirt. Now and then a hat, if he came to the  
18 shop.

19 Q. And did it say NAPA on it?

20 A. It said NAPA.

21 Q. And did he drive a NAPA pickup truck?

22 A. Yes. It was a small S-10 with one of the yellow caps on it.

23 Q. And what would he be doing for NAPA?

24 A. Delivering parts. He also was the salesman that did the  
25 inventory for NAPA at our facility. So he would go through and

1 check our main parts, truck shop, keep inventory on it without  
2 having to walk around and reordering parts.

3 Q. And he would take orders as well?

4 A. Yes, he would take orders bi-weekly and come back the  
5 following week with -- with his invoice. I would review the  
6 invoice, sign it and he would put the parts away.

7 Q. And did you also see him at the store?

8 A. Yes. I had an account at NAPA. I bought quite a few of my  
9 parts at the NAPA Store, yes.

10 Q. From him?

11 A. From Bob or Gary, whoever was working behind the counter.

12 Q. So you also saw Gary Wilson there.

13 A. Yes.

14 Q. And do you know what he was doing there?

15 A. He was working as a businessman, taking care of the  
16 customers and took care of me.

17 Q. And how often would you go to the store yourself?

18 A. I might average twice a month that I would actually  
19 personally go there and pick out parts.

20 Q. And what days of the week would that be?

21 A. Normally on a Wednesday. Our payday is on Wednesday so I  
22 would stop in then after the bank, would stop at the NAPA Store.

23 Q. And what would be -- would there be any other day that you  
24 would regularly go there?

25 A. A Friday. A Friday was a common day during the winter

1 months, yes.

2 Q. And have you ever seen Maxine Pochmara at the NAPA Store  
3 when you would go there?

4 A. Not that I know of.

5 Q. Have you ever seen Sue Wilson there?

6 A. Not that I know of.

7 Q. Never?

8 A. I was in there one time and Mr. Pochmara had mentioned, this  
9 is Gary's wife in the back and it was just a say so and it was  
10 gone and it's been a long time ago. I wouldn't even know what  
11 the lady looks like today.

12 Q. And what was that person doing?

13 A. It looked like she was doing clerical work with invoices in  
14 the back, to the left when you walk in the store. And that was  
15 just a short look and that was it.

16 Q. Okay. And are you familiar with Rogers City?

17 A. Fairly familiar.

18 Q. Do you know approximately how many stoplights there are in  
19 Rogers City?

20 A. We have one stoplight in Rogers City, one stoplight in the  
21 county, ma'am.

22 MS. POP: Thank you. No further questions.

23 CROSS-EXAMINATION

24 BY MR. JACOBS:

25 Q. Good to know how many stoplights you have in Rogers City.

1 A. It's a red light district.

2 Q. It's a red light district, okay. Do you actually know  
3 Maxine Pochmara?

4 A. No, I do not, sir.

5 Q. So you are -- all right. You don't know her.

6 A. No, I do not.

7 Q. Have you ever seen her?

8 A. I was at Bob's house several years ago. I picked up some  
9 chickens. There was a lady there and I couldn't even tell you  
10 that that's the lady he is with now.

11 MR. JACOBS: I have nothing further, your Honor.

12 THE COURT: Mr. Piazza?

13 MR. PIAZZA: Thank you, your Honor.

14 THE COURT: Anything related to chickens or stoplights?

15 MR. PIAZZA: No.

16 CROSS-EXAMINATION

17 BY MR. PIAZZA:

18 Q. Sir, you indicated that at one time, it was somebody that  
19 mentioned that Gary's wife was in the back doing some clerical  
20 work, is that correct?

21 A. I had walked in to buy some parts and I've known Robert  
22 Pochmara since 1970 through school and we would visit now and  
23 again if there was a gathering. And I walked in there one time.  
24 I mentioned, who is that? And he said, well, that's Gary's wife,  
25 and there wasn't even no names mentioned.

1 Q. Okay.

2 A. And that was it. And I just kept on going on my business.

3 Q. She was in the back?

4 A. She was -- you walked in the store, it was on the left-hand  
5 side, there was a small cubicle there. She was doing some work.

6 A lady was doing some work.

7 Q. And you couldn't identify that person.

8 A. No, sir, I could not.

9 Q. And that was one time out of the --

10 A. The whole duration of me going in that NAPA Store, yes.

11 Q. Okay. And you didn't introduce yourself.

12 A. No.

13 Q. Okay. And she didn't introduce herself?

14 A. She stayed right where she was at.

15 Q. So it could have been anybody back there.

16 A. That is correct, sir.

17 MR. PIAZZA: Nothing further.

18 THE COURT: Are we at a conclusion?

19 MS. POP: Nothing further, your Honor.

20 THE COURT: Thank you very much, sir. We appreciate  
21 your attendance.

22 (At 12:35 p.m. - witness excused)

23 THE COURT: Government's next witness, please.

24 MS. PARKER: Your Honor, next we call Jeffrey Hackett.

25 THE COURT: Could you raise your right hand.

1 Do you solemnly swear that the testimony you are about  
2 to provide will be the truth, the whole truth and nothing but the  
3 truth so help you God?

4 THE WITNESS: Yes, I do.

5 THE COURT: Please have a seat.

6 JEFFREY HACKETT

7 Having first been duly sworn at 12:36 p.m., testified as follows:

8 DIRECT EXAMINATION

9 BY MS. PARKER:

10 Q. Mr. Hackett, would you state your full name and spell it for  
11 us, please?

12 A. Jeffrey Hackett, J-E-F-F-R-E-Y, H-A-C-K-E-T-T.

13 Q. How are you employed?

14 A. I'm a Special Agent with the Office of Inspector General,  
15 Office of Investigations, United States Railroad Retirement  
16 Board.

17 Q. What does Office of Special Investigations mean?

18 A. Office of Inspector General or --

19 Q. I'm sorry, Office of Inspector General.

20 A. The Office of Inspector General investigates allegations of  
21 fraud, waste and abuse against the Railroad Retirement Board and  
22 its programs.

23 Q. How long have you been so employed?

24 A. Since August of 2002.

25 Q. And in that capacity, have you been involved in the

1 investigation involving the individuals charged in this case?

2 A. Yes, I have.

3 Q. By the way, where is your office located?

4 A. Chicago, Illinois.

5 Q. And what geographic area do you cover out of that Chicago  
6 office?

7 A. Chicago, Illinois, is the national headquarters. We have no  
8 Washington, D.C. connection. And we cover basically the entire  
9 United States.

10 Q. All right. And so you do lots of travel.

11 A. Yes.

12 Q. Where did you grow up?

13 A. Saginaw Township.

14 Q. Where did you go to college?

15 A. Michigan State University.

16 Q. Did you get a degree there?

17 A. I did.

18 Q. And what was your degree in?

19 A. Criminal Justice with a minor in History.

20 Q. How did you become involved in this investigation?

21 A. We received a referral from the Detroit district office for  
22 the U.S. Railroad Retirement Board and we opened an investigation  
23 in September of 2008.

24 Q. And what was the nature of that communication from the  
25 Detroit office of the Railroad Retirement Board?

1 MR. PIAZZA: I will object to that, your Honor, as being  
2 hearsay. You know, he said he received a communique. Based on  
3 that, he did certain acts. But what the communique was, that's  
4 hearsay.

5 MS. PARKER: I asked for the nature of the report, your  
6 Honor, not the specific content.

7 MR. PIAZZA: But the nature of the report indicates  
8 what's in the report.

9 MR. JACOBS: Yeah.

10 THE COURT: Not necessarily. We will take the witness's  
11 testimony. We will take your objection up if you think it's  
12 appropriate based on his testimony.

13 THE WITNESS: The referral we received was that an  
14 anonymous complaint in the form of a letter was received at the  
15 Detroit district office for the U.S. Railroad Retirement Board  
16 indicating that a Robert Pochmara who was receiving a disability  
17 from the U.S. Railroad Retirement Board, was seen working at a  
18 NAPA Auto Parts located in Rogers City, Michigan.

19 BY MS. PARKER:

20 Q. And based on that information, did you start to check to see  
21 if Mr. Pochmara had reported any working?

22 A. We did.

23 Q. And what did you find?

24 A. We had some indication that --

25 MR. PIAZZA: Your Honor, I'm going to object to, "We had



1 this" or "We had that." He can testify to what he did but not  
2 what other people did.

3 THE COURT: He -- he may have observed it. The only  
4 question is whether he has personal knowledge of the information  
5 and the question is framed in such a manner that that would be  
6 the response the gentleman would have to provide.

7 I will overrule the objection.

8 THE WITNESS: After we received the allegation, I  
9 started my initial investigation into the matter.

10 BY MS. PARKER:

11 Q. And did you check to see whether Mr. Pochmara had in fact  
12 reported any earnings to the Railroad Retirement Board?

13 A. Yes.

14 Q. And what did you find when you checked to see if Mr.  
15 Pochmara had reported any earnings?

16 A. That he did not.

17 Q. But based on the tip, did you take another step in the  
18 investigative process?

19 A. Yes.

20 Q. And what was the next step that you took to try to  
21 investigate this report?

22 A. I requested that a form, which is an OI-41, be sent out to  
23 the NAPA Auto Parts in Rogers City, Michigan, requesting any  
24 employment information related to Robert J. Pochmara.

25 MS. PARKER: Your Honor, may I approach the witness?

1 THE COURT: You may.

2 BY MS. PARKER:

3 Q. I've placed before you some exhibits marked Government's  
4 Proposed Exhibit 24A, B and C, and also 25. Do you recognize  
5 those documents?

6 A. Yes, I do.

7 Q. And would 24A, B and C be a series of documents that were  
8 part of your initial inquiry in response to this tip?

9 A. Yes, they are.

10 Q. All right. And then Exhibit 25, would that be a subsequent  
11 inquiry made, also, in response to the tip?

12 A. Yes, it is.

13 Q. And 24B and C would be part of the response that you  
14 received to the initial -- or the first inquiry?

15 A. Yes, 24B and C were in response to the -- to the exhibit  
16 marked as 24A.

17 MS. PARKER: All right. Your Honor, I will offer  
18 Government's Proposed Exhibits 24A, B and C and 25.

19 MR. JACOBS: I have no objection, your Honor.

20 MR. PIAZZA: No voir dire at this time and -- and no  
21 comment.

22 THE COURT: They are received.

23 BY MS. PARKER:

24 Q. I would like to ask that Exhibit 24A be displayed, please.

25 All right. Just as a starter, what do you call this form?

1 A. It's an OI-41. The U.S. Railroad Retirement Board, Office  
2 of Investigation uses this to query employers, if we have an  
3 allegation that a disability annuitant or other may be  
4 employed.

5 Q. And this particular copy of that form was sent to what  
6 address?

7 A. It was sent to the NAPA Auto Parts located at 1095 West 3rd  
8 Street, Rogers City, Michigan, 49779.

9 Q. And on the upper right-hand side, did it indicate who the  
10 inquiry was related to?

11 A. Yes, it did.

12 Q. And who is that?

13 A. Robert Pochmara.

14 Q. And does it provide a Social Security number for Mr.  
15 Pochmara?

16 A. Yes, it does.

17 Q. All right. The opening paragraph of this letter, what does  
18 that state?

19 A. It states:

20 "Our files indicate the individual named above  
21 has been employed by you. This individual receives  
22 disability benefits under the Railroad Retirement Act,  
23 (RRA, a federal law). These benefits are subject to a  
24 monthly earnings limitation. Consequently, we need to  
25 know the months worked and earnings for those months."

1 Q. So in this paragraph, does it say retirement benefits or  
2 disability benefits?

3 A. It says disability benefits.

4 Q. And then it goes on to request various information regarding  
5 that employee?

6 A. That's correct.

7 Q. All right. And did you receive a response to that request?

8 A. I did.

9 Q. Let's go to the second page of that exhibit, please. All  
10 right. If you want, we could back up. On the back of the first  
11 page of that exhibit, is there a stamp?

12 A. There is.

13 Q. And what's that?

14 A. That's a stamp that the Office of Investigations for the  
15 Office of Inspector General, we utilize that to stamp in things  
16 that we receive in investigations.

17 Q. All right. And the date that this response was received  
18 then was what?

19 A. It appears to be November 7th of 2008.

20 Q. Now, going then to the front of the second page of this,  
21 what time period was covered by this request for information?

22 A. Number one, date began employment with you, month January,  
23 day 1st, year 2003.

24 Q. And the ending date was marked as what?

25 A. Date last employed, month was blank, day was blank, year was

1 blank. And in parentheses, it says if still working, so state,  
2 and that's highlighted and circled.

3 Q. Was that done by the person who responded to this  
4 information?

5 A. It was not done by me so I can assume.

6 Q. All right. And you were involved in sending this out?

7 A. Yes.

8 Q. You didn't send it out that way.

9 A. No.

10 Q. You got it back that way.

11 A. Yes.

12 Q. Okay. And then below there, there is a chart with every  
13 month of the year from 2003 to 2007?

14 A. That's correct.

15 Q. And various dollar figures are filled in for those months  
16 and years.

17 A. That's correct.

18 Q. And then is there a remarks section?

19 A. Yes, there is.

20 Q. And in the remarks section, what does it say?

21 A. It says:

22 "See cover letter and annual meeting of  
23 shareholders for GW & SW, Inc."

24 And then 1/1/98.

25 Q. And also, perhaps, for each of the years that this

1 information covered, 2003 to 2007, there is a total for the  
2 year?

3 A. That's correct.

4 Q. And in 2003, the total was what?

5 A. \$27,825.

6 Q. And going up to 2007, the total was?

7 A. For just the year 2007?

8 Q. Correct.

9 A. For 2007, \$36,305.

10 Q. And was that form signed?

11 A. Yes, it was.

12 Q. And what was the name signed?

13 A. The signature on the form was Sue Wilson.

14 Q. And is there anything after the signature?

15 A. Sec, S-E-C, dash treasurer.

16 Q. And the date?

17 A. November 3rd, 2008.

18 Q. Now, you already read the part about the annual meeting and  
19 shareholders and cover letter.

20 Let's go on to 24B. Is that the cover letter that you  
21 received with this response?

22 A. Yes, I did.

23 Q. And the date of it?

24 A. November 3rd, 2008.

25 Q. And this is from?

1 A. NAPA Auto Parts, d/b/a, W & W Auto Parts, 1095 West 3rd  
2 Street, Rogers City, Michigan, 49779. And then there is a phone  
3 number, (989) 734-7363.

4 Q. What does d/b/a mean to you?

5 A. Doing Business As.

6 Q. And the third paragraph of the letter says what?

7 A. Third paragraph states:

8 "Gary Wilson and Robert Pochmara are store  
9 managers working equal hours based on shares owned  
10 included in the annual meeting of shareholders and  
11 Board of Directors of GW & SW, Inc."

12 Q. And it's signed?

13 A. Signed Sue Wilson, sec/treasurer.

14 Q. Okay. The next document I would like to ask you to turn  
15 your attention to is Exhibit 24C as in Charlie. Is -- how is  
16 that document entitled?

17 A. Annual Meeting of Shareholders and Board of Directors of GW  
18 & SW, Inc.

19 Q. And does it indicate when the 1998 annual meeting of  
20 shareholders was conducted?

21 A. It does.

22 Q. Excuse me. I'm sorry?

23 A. Yes, it does.

24 Q. And what date?

25 A. January 5th, 1998.

1 Q. And do you see a paragraph -- the first paragraph that  
2 begins saying, "Further resolved"?

3 A. Yes, I do.

4 Q. All right. What does that paragraph say?

5 A. "Further resolved that the sale of a minority  
6 share of the corporation was discussed and agreed  
7 upon. To this end, the sale agreement between the  
8 corporation and Maxine and Robert Pochmara, husband  
9 and wife, dated January 5th, 1998, is hereby annexed  
10 to the minutes of this meeting."

11 "And it is --"

12 Q. All right. And going down three paragraphs below that,  
13 there is another paragraph that begins, "Further resolved."  
14 What does that say?

15 A. "Further resolved that 45 shares of stock,  
16 representing 45 percent of the corporation be and  
17 the same hereby are issued to Maxine Pochmara and  
18 Robert Pochmara, husband and wife, as evidenced on  
19 Certificate No. 3."

20 "And it is --"

21 Q. All right. Let's go on to the second page of this exhibit,  
22 please. Do you see a listing of corporate officers?

23 A. Yes, I do.

24 Q. And who are -- what names are listed for the corporate  
25 officers?



1 A. The names listed are Gary L. Wilson as President, Robert  
2 Pochmara as Vice President, Sue A. Wilson as Secretary, Sue A.  
3 Wilson as Treasurer.

4 Q. Do you see any reference to a Maxine Pochmara being an  
5 officer?

6 A. I do not.

7 Q. And what names purport to be signed there?

8 A. There is a signature above Gary L. Wilson and there is also  
9 a signature above Sue A. Wilson.

10 Q. As your investigation continued, did you obtain and serve  
11 various Grand Jury subpoenas to obtain records?

12 A. I did.

13 Q. And was one of those Grand Jury subpoenas directed to Huron  
14 National Bank?

15 A. Yes, it was.

16 Q. And I show you Government's Proposed Exhibit 29. Do you  
17 recognize that?

18 A. Yes, I do.

19 Q. That's a fairly thick stack of pages.

20 A. Yes.

21 Q. As a group, what are those?

22 A. These are checks bearing a letterhead of NAPA, W.W. Auto  
23 Parts, issued from an account held there, to a Maxine Pochmara.

24 MS. PARKER: Your Honor, the government offers Exhibit  
25 29.

1 MR. JACOBS: No objection.

2 MR. PIAZZA: No comment, your Honor.

3 THE COURT: It's received.

4 BY MS. PARKER:

5 Q. This group of exhibits, what's the earliest date you have?

6 A. On June 6th of 2005.

7 Q. And what's the last date?

8 A. The last date is March 6th of 2009.

9 Q. Do you have an understanding as to why you don't have checks  
10 from before that first date in June, 2005?

11 A. Yes. My understanding is the bank doesn't keep them any  
12 further back.

13 Q. All right. Let's look at some of the checks from this  
14 group, please. Again, you indicated the checks were drawn on the  
15 NAPA Auto Parts Store account?

16 A. Correct.

17 Q. And this particular one is from June of 2005. Is that the  
18 first one in the set?

19 A. That's correct.

20 Q. And it's made payable to whom?

21 A. Maxine Pochmara.

22 Q. And in what amount?

23 A. \$460.43.

24 Q. And have you reviewed this stack of checks?

25 A. Yes.

1 Q. And is there a recurring basis on which these checks are  
2 issued?

3 A. Yes.

4 Q. What is that recurring basis or in time interval?

5 A. They seemed to be issued every week. Weekly.

6 Q. And throughout the period from June of 2005 up to when you  
7 were unable to obtain further records of such checks.

8 A. That's correct.

9 Q. Let's go on to the next one, please. This is another check  
10 from 2005?

11 A. Correct.

12 Q. All right. And again, made payable -- is this a week later?

13 A. Yes, seven days later, June 3rd, (sic) 2005.

14 Q. The amount?

15 A. \$460.43.

16 Q. I'm sorry. I think I misunderstood you. I think you said  
17 June 3rd. Was that --

18 A. June 13th.

19 Q. Okay. And the amount?

20 A. \$460.43.

21 Q. And in your review of these checks, did you notice anything  
22 about the amounts?

23 A. The amounts seemed to stay pretty consistent.

24 Q. I would like to ask you to flip to the -- near the end of  
25 that stack. And find a Check 3277.

1 A. It's 3277?

2 Q. Yes.

3 A. Issued on January 19, 2009?

4 Q. Correct.

5 A. Okay.

6 Q. On that paycheck, again, you said the date was January 19,  
7 2009?

8 A. Correct.

9 Q. Made payable to Maxine Pochmara?

10 A. Yes.

11 Q. What's the amount of that check?

12 A. \$441.60.

13 Q. And down in the lower corner, do you see a memo?

14 A. Yes, I do.

15 Q. What does that memo say?

16 A. The memo states: "Pay period, 01/19/2009 -- 01/19/2009."

17 Q. And are there other checks in this time frame of this  
18 collection of checks that have similar memos?

19 A. Yes.

20 Q. Next I would like to show you a group of documents marked  
21 Government's Proposed Exhibits -- oh, sorry, you're right. I  
22 think I missed one thing. I'm sorry.

23 I need to go back to Exhibit 25. Sorry. You have  
24 Exhibit 25 handy?

25 A. Yes.

1 Q. All right. That makes some reference earlier to making a  
2 follow-up inquiry to the NAPA Auto Parts Store?

3 A. That's correct.

4 Q. All right. And would that be contained in Exhibit 25?

5 A. Yes.

6 Q. Could we have it? Again, that was addressed to whom?

7 A. Sue Wilson, NAPA Auto Parts, 1095 West 3rd Street, Rogers  
8 City, Michigan, 49779.

9 Q. And it's regarding?

10 A. Robert Pochmara.

11 Q. And on this form, you have the same basic information on the  
12 first page.

13 A. Exactly. It's the same form.

14 Q. Regarding the request.

15 A. Same form.

16 Q. All right. The second page is somewhat different in its  
17 content. Did you provide any of the handwriting that's on that  
18 form?

19 A. No.

20 Q. Was that handwriting there when you sent it out?

21 A. No, it was blank.

22 Q. And when you got it back, was that when you found that  
23 handwriting?

24 A. Yes.

25 Q. The first -- there is a box with a check in it and number

1 one. What does that say?

2 A. Box -- or I'm sorry, No. 1, "Date began employment with you,  
3 Jan, day 1, year 1998."

4 Q. And above that, there is a handwritten, what?

5 A. Above that is handwritten, "Maxine Pochmara."

6 Q. And then below the Line 2, there is another handwritten  
7 entry which says what?

8 A. Below Line 2, "Maxine still draws salary."

9 Q. Below that, in the remarks section, what was written there?

10 A. In the remarks:

11 "Robert does not, has never, drawn earnings from  
12 NAPA/W & W Auto Parts, only Maxine Pochmara does.  
13 Robert works on behalf of Maxine Pochmara."

14 Q. And again, this form is signed with what name?

15 A. There is a signature in the signature block that states Sue  
16 Wilson.

17 Q. And the date?

18 A. 12/10/08.

19 Q. All right. Let's go on to Exhibits 30A through J. Do you  
20 recognize those?

21 A. Yes, I do.

22 Q. Are those more documents that you obtained through subpoena?

23 A. Yes.

24 Q. And just generically describe those.

25 A. Generically, these are earnings reports for GW & SW, Inc.

1 Q. And do they cover a certain time period?

2 A. Yes.

3 Q. And 30A would be for what time period?

4 A. Ah, 30A would be for the month ending 12/31 of 2000.

5 Q. And 30B?

6 A. Exhibit 30B, the month ending 2/31 of 2001.

7 Q. And each successive -- each document thereafter would be for  
8 another year?

9 A. Correct.

10 Q. And on these documents, is there an indication of the  
11 earnings paid by GW & SW, Incorporated?

12 A. Yes.

13 MS. PARKER: Your Honor, I offer Government's Proposed  
14 Exhibit 30A through J.

15 THE COURT: Any opposition to 30A through J?

16 MR. JACOBS: I have no objection.

17 MR. PIAZZA: If I may voir dire.

18 BY MR. PIAZZA:

19 Q. You don't know who prepared those documents, do you?

20 A. I -- I do not.

21 MR. PIAZZA: I would object. I don't think there is any  
22 foundation for this particular document. He has no idea who even  
23 prepared them.

24 THE COURT: I don't believe that's part of the inquiry  
25 at this point. They were responsive to a subpoena, correct?

1 MS. PARKER: That's correct.

2 BY MS. PARKER:

3 Q. And you obtained a certificate of authenticity?

4 A. I did.

5 THE COURT: Overruled. We will receive them into  
6 evidence.

7 BY MS. PARKER:

8 Q. All right. Now, I would like to ask that Exhibit 30A be  
9 displayed. All right. You indicated this was for the month  
10 ending 12/31/00 or 2000. Is that indicated in the upper  
11 left-hand corner?

12 A. Yes.

13 Q. And below that, there are set a boxes for different people  
14 or sections?

15 A. Yes, different sections.

16 Q. The first one is for whom?

17 A. Wilson, Gary.

18 Q. And does it list -- oh, excuse me, I should ask -- what type  
19 of information does it list for Gary Wilson?

20 A. The gross pay, gross wages, Social Security withheld,  
21 Medicare withheld, federal tax withheld, state tax withheld,  
22 advances, and then net pay.

23 Q. And across from the name Wilson, comma, Gary, do you see a  
24 Social Security number?

25 A. I do.



1 Q. And is there a year-to-date total for net pay?

2 A. There is.

3 Q. And in this case, 2000, what was the net total pay?

4 A. \$21,224.82.

5 Q. The next entry is for whom?

6 A. Wilson, Sue.

7 Q. And same type of information?

8 A. Yes.

9 Q. Social Security number?

10 A. Xxx-xx-0127.

11 Q. You see that on the form across from her name?

12 A. Yes.

13 Q. And then a net pay figure for Sue Wilson is what?

14 A. \$5,251.84.

15 Q. Okay. Skipping the next name, going to the name below that,  
16 what name do you see there?

17 A. Maxine Poch -- or I'm sorry, Pochmara, Maxine.

18 Q. Same type of information is entered there?

19 A. Yes.

20 Q. Social Security number for her?

21 A. Yes, her Social Security number is listed as xxx-xx-0934.

22 Q. And the net pay?

23 A. Net pay of \$19,789.80.

24 Q. Okay. Going to the next page of this document, does that  
25 appear to have the total for all of the people on the previous

1 page?

2 A. Yes.

3 Q. Do you see any entries for Robert Pochmara?

4 A. No.

5 Q. The next document, 30B, again, this is for the year, what?

6 A. States at the top left corner, month ending 12/31/01.

7 Q. And there is the same type of information for Gary Wilson?

8 A. Yes.

9 Q. With a net pay of?

10 A. \$21,256.04.

11 Q. Sue Wilson?

12 A. \$4,848.44.

13 Q. You see a Maxine Pochmara near the bottom?

14 A. I do.

15 THE COURT: Miss Parker, we will be looking for a place  
16 to break for the day.

17 MS. PARKER: Yes, your Honor.

18 BY MS. PARKER:

19 Q. Net pay there?

20 A. Net pay for Maxine Pochmara is listed as \$19,643.

21 Q. And if you add in the pay figures for the other names listed  
22 on that sheet -- well, I will leave it there. Never mind.

23 Now, going to the third page, if you add in the figures  
24 for the other people on that page and the second page, do you  
25 come up with the total net pay that is reflected on the third

1 page of Exhibit 30B?

2 A. Yes.

3 Q. All right. You've gone through these other exhibits, in the  
4 30 series?

5 A. Yes.

6 Q. They cover each year up to and including 2009?

7 A. Yes.

8 Q. For each of those years, is there a similar entry for Maxine  
9 Pochmara?

10 A. Yes.

11 Q. The amounts may change slightly over time?

12 A. Yes.

13 Q. But do you find any entries for Robert Pochmara for any year  
14 covered by any of the exhibits in the Exhibit 30 series?

15 A. I do not.

16 MS. PARKER: That would be a good place to stop for the  
17 moment, your Honor.

18 THE COURT: Very good. We appreciate the day that you  
19 have invested with us so far. Anyone have any logistical  
20 problems with being here tomorrow morning at 8:30? The gentleman  
21 should be here shortly.

22 Please rise for the jury.

23 (At 1:10 p.m. - jury leaves courtroom)

24 THE COURT: You're excused from the stand. Please be  
25 seated.

1           We have had a brief discussion at sidebar concerning the  
2 scope of the proofs. We received a fair amount of information  
3 related to the transactions between Mr. Pochmara and the, is it  
4 Railroad Retirement Pension Board?

5           THE WITNESS: Railroad Retirement Board, your Honor.

6           THE COURT: Okay. Those are proofs that are of  
7 relevance to Mr. Pochmara's period of justification for handling  
8 the financial affairs that he did in the way that he did.

9           And the discussion that we had at this stage is  
10 two-fold, trying to figure out what is relevant and what is not  
11 relevant both to the government's case as well as the defense.

12           And I'm also trying to at this stage, as we've talked  
13 about, given the time constraints, willing to exercise some  
14 authority under FRE 102, to at least eliminate cumulative  
15 evidence. We are now at a point where the Wilsons' involvement  
16 with the Railroad Retirement Board investigation has been  
17 directly addressed.

18           MS. PARKER: I'm sorry? I couldn't --

19           THE COURT: Has been directly addressed --

20           MS. PARKER: Okay. I just couldn't hear you.

21           THE COURT: -- for the first time. Can you give me a  
22 little bit of an understanding of the way you see the proofs  
23 going for the government at this point going forward?

24           MS. PARKER: Yes, your Honor. The government would  
25 intend to present additional testimony from Mr. Hackett regarding

1 other documents that were obtained through subpoena regarding the  
2 Wilsons' business practices versus the reporting to the  
3 governmental agencies.

4 We intend to have the -- an employee of the CPA firm for  
5 the Wilsons and the business to address some documents that were  
6 in their file.

7 There is an IRS person who will explain some of the  
8 implications in terms of the reporting to the agency of  
9 Maxine's -- earnings by Mr. Pochmara to the agencies involved.

10 There may be, and I will review this in light of the  
11 Court's concerns, but a few other local people but I'm not sure  
12 until I review it.

13 THE COURT: Well, how do you view the response -- two  
14 responses that I believe Mrs. Wilson was responsible for  
15 authoring to the Railroad Retirement Board? Is it your  
16 contention that those documents themselves were fraudulent in  
17 terms of the response that they furnished the Railroad Retirement  
18 Board? Or is the tenor of the conspiracy count and reporting  
19 count solely limited to the -- your suggested fraud on the Social  
20 Security Administration?

21 MS. PARKER: Well, there is also the IRS component to  
22 the conspiracy but --

23 THE COURT: I understand.

24 MS. PARKER: -- I think the answer is, there is a  
25 fraudulent component to them in and of itself in attempting to

1 characterize the relationship contrary to really what it was.

2 I think there was a suggestion, for example, in opening  
3 statements, as I heard it, that somehow in responding to this  
4 query, they misunderstood and provided Maxine's information and I  
5 think it's -- the document doesn't request anything regarding  
6 Maxine. It requests Robert's earnings and what was attempted to  
7 be done in the response was to evade answering the question by  
8 trying to rephrase it as, well, this is what we pay Maxine for  
9 Robert's work and I think that in itself is fraud and an  
10 admission to fraud, essentially.

11 THE COURT: So they were -- they were correct from your  
12 point of view in furnishing a response that reflected Robert's --  
13 Robert's salary income but mischaracterized it in the other  
14 portions of the response.

15 MS. PARKER: Well, I think that -- that may be correct.  
16 The numbers are correct. As far as I know, those numbers  
17 accurately reflect what they were paying, but they were paying  
18 Robert and not Maxine.

19 Furthermore, in November of 2008, they know at that  
20 point from reading the letter, that these are disability  
21 benefits. And it continues thereafter. And their answers change  
22 when they become aware of the investigation and try to  
23 recharacterize it even somewhat more and I think that's reflected  
24 in the second exhibit, Exhibit 25.

25 So am I answering the Court's question?

1 THE COURT: Yes, you are.

2 MS. PARKER: I wanted to make sure I was doing that.

3 THE COURT: The additional witnesses that you would  
4 anticipate then following the CPA?

5 MS. PARKER: Well, I still have more to do with Mr.  
6 Hackett.

7 THE COURT: He is not done.

8 MS. PARKER: No. I think -- he's not done. There is  
9 the CPA. There is the accountant -- excuse me, not the  
10 accountant. The IRS revenue agent. I'm sorry, I don't have my  
11 exhibit list -- or I mean witness list handy.

12 As I said before, possibly a couple of the local people  
13 but that would pretty much be it, your Honor.

14 THE COURT: Okay. I'm trying to understand what is --  
15 what facts are contested here? We've heard a fairly complete  
16 outline of the government's proofs. We've heard a number of the  
17 material witnesses.

18 Can you tell me what facts are actually contested here  
19 for the jury to resolve in your view?

20 MR. JACOBS: That we actually had Robert Pochmara  
21 working at the NAPA Store and that we -- instead of paying him as  
22 an employee, we paid his wife to defraud the government. That's  
23 the dispute, your Honor. Are we saying -- well, the Court heard  
24 my opening.

25 THE COURT: Let's stop, let's stop. Because it seems to

1 me that the document that you furnished to the Railroad  
2 Retirement Board conceded that Mr. Wilson and Mr. Pochmara were  
3 essentially laboring for the most part as equal entrepreneurs.

4 What was the language Miss Wilson used in the 2008  
5 response?

6 MR. JACOBS: Co-managers.

7 THE COURT: Do you have the 2008 document there?

8 MS. PARKER: Yes, your Honor.

9 THE COURT: It would be 24 --

10 MS. PARKER: It's 24A. I think you actually mean --

11 THE COURT: B.

12 MS. PARKER: -- 24B, says:

13 "Gary Wilson and Robert Pochmara are store  
14 managers working equal hours based on shares owned,  
15 including in the annual meeting of shareholders and  
16 board of directors."

17 THE COURT: Working equal hours. Now, that's -- that's  
18 Mrs. Wilson's language. So is Mr. Wilson contesting Mrs.  
19 Wilson's representations to the Railroad Retirement Board? Or  
20 is the fact that Mr. Pochmara was working equal hours  
21 contested? And on what basis? I mean, we've had a number of  
22 witnesses traipse --

23 MR. JACOBS: Well, I know what my client's testimony is  
24 going to be, your Honor, and I don't feel there is a need for me  
25 to answer that right now in front of Miss Parker. But he does



1 have a response to that.

2 THE COURT: Well, but I need to make determinations  
3 about what is relevant and not relevant, what's -- what evidence  
4 is admissible and what evidence is becoming cumulative. I'm  
5 trying to figure out where the issues are for the trier of  
6 fact.

7 MR. JACOBS: My client's testimony -- to answer the  
8 Court's inquiry, under protest, my client would respond that he  
9 received that letter 24 at work, that he came home, that he  
10 talked to his wife about it and they thought that they were  
11 inquiring regarding Maxine's income and they put down Maxine and  
12 that's why the additional documents are attached. That Maxine  
13 was paid based on her 45 percent share of the business and not  
14 based on Bob's working X number of hours a week.

15 THE COURT: Now, the --

16 MR. JACOBS: I know what the documents say.

17 THE COURT: Since the '30s, there's been a doctrine as a  
18 part of the Internal Revenue Code, the interpretation of a  
19 Supreme Court decision referring to the assignment of income  
20 doctrine.

21 It rose out of a case where a, as I recall, husband and  
22 wife, filed separately. Wife had a lower income tax bracket than  
23 the husband. So it was assigned, the income, over to the wife  
24 and reported it at the lower -- lower bracket. And the United  
25 States Supreme Court said you cannot assign someone else's income

1 as described in the Internal Revenue Code, Section 61.

2 MR. JACOBS: And, your Honor, even though the law may  
3 say that my client cannot do what he asserted he did, it still  
4 goes to his willfulness and his mens rea. It's still an element  
5 of the offense.

6 THE COURT: Well, you made two points. The point is,  
7 apparently, you do contest the fact that Mr. Pochmara labored  
8 equally to Mr. Wilson or approximately equally. Mrs. Wilson's  
9 response was inaccurate.

10 MR. JACOBS: Yes.

11 THE COURT: And with respect to the second point, the  
12 characterization of the income -- any income, to Mr. Pochmara is  
13 also inaccurate, that what was disclosed in that document,  
14 notwithstanding the first page, was Maxine Pochmara's income.

15 MR. JACOBS: Yes. Yes, sir. And it's the correct  
16 numbers that were actually reported for Maxine.

17 THE COURT: Notwithstanding our discussion about the  
18 assignment of income doctrine citation of the Social Security  
19 statute as well as Section 61 of the Internal Revenue Code.

20 All right. That gives me a little bit of guidance, I  
21 guess, as we go forward.

22 I have a set of instructions -- you were rising to your  
23 feet. Do you have a point to make?

24 MS. PARKER: Well, I do, your Honor, and that's where --  
25 I understand the Court's concern about cumulative information.

1 And we don't wish to waste the Court's time.

2 On the other hand, I could literally call dozens of  
3 people -- I have no intent to -- but that would say that Robert  
4 Pochmara was there working. Mrs. Pochmara was not. And I  
5 believe that as long as they are going to contest that, that we  
6 should be allowed to offer some of it. And I know we've offered  
7 some but I think that there are other people that we've prepared  
8 to do that with.

9 THE COURT: But there is a difference of opinion between  
10 the two defendants. Mrs. Wilson's position will be, that her --  
11 the document that she furnished the Railroad Retirement Board  
12 was fair and accurate. It wasn't fraudulent and that is that  
13 Robert Pochmara worked as an equal participant along with Gary  
14 Wilson.

15 Mr. Wilson disputes that. He says she is wrong, she  
16 mischaracterized it. That the information she furnished was  
17 inaccurate.

18 So I don't know how -- and I appreciate your point at  
19 this stage. We are not at a point where we can easily contract  
20 proofs.

21 MS. PARKER: Well, that's my thing. I mean, I don't  
22 want to bring people in here, keep them in a hotel overnight so  
23 they are ready to be on the stand at 8:30 in the morning only to  
24 have the Court say this isn't an issue, but I hear it being an  
25 issue.

1 THE COURT: It is an issue. They've told us it's an  
2 issue. I don't quite understand it but it is an issue and so we  
3 do have a jury-submissible question, I guess, on the question and  
4 we will continue to entertain witnesses.

5 We will see you in the morning.

6 MR. JACOBS: Yes, sir.

7 (At 1:40 p.m. - proceedings recessed)

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*CERTIFICATE OF COURT REPORTER*

I, PEG L. GOODRICH, Official Court Reporter  
in and for the United States District Court, Eastern  
District of Michigan, appointed pursuant to the  
provisions of Title 28, United States Code, Section  
753, do hereby certify that the foregoing proceedings  
held before the HONORABLE THOMAS L. LUDINGTON, District  
Court Judge, is a true and correct copy of the transcript  
originally filed with the Clerk of the Court on November 12,  
2013, and incorporating redactions of personal identifiers  
requested by the following attorneys of record or parties:  
Michael Skinner on behalf of Gary and Sue Wilson, in  
accordance with Judicial Conference policy. Redacted  
characters appear as an "x" in the transcript.

s/Peg L. Goodrich  
Peg L. Goodrich, CSR, RPR, RMR  
Federal Official Court Reporter  
United States District Court  
Eastern District of Michigan